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Rehearing granted. Reversed with instructions

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~720.~~ ~~3695~~ 138

JOSEPH W. PARISH AND WILLIAM L. HUSE, LATE PARTNERS UNDER THE NAME, FIRM, AND STYLE OF JOSEPH W. PARISH & CO., FOR THE USE OF JOSEPH W. PARISH, APPELLANTS,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 2, 1877.

tract to any extent when made must operate upon a power to borrow before it is exercised, and have a sensible influence on the contract."

Unless this Court is prepared to hold that the laws of Connecticut "have a sensible influence on the contract " evidencing *a business* transaction in the State of Illinois, that the laws of Connecticut enter into such a transaction and contract, the statute in question must be declared repugnant to the spirit of the Constitution.

The tax by Connecticut upon the obligations of the plaintiff in error, made by Cummings, a citizen of Illinois, if valid, is a tax upon the borrowing power of a citizen of Illinois, to be paid out of his property. Where, in the Constitution of the United States, can be found permission given to one State to lay a tax upon the citizens or property of the citizens of another State?

It may be asked what principle more entirely pervades the Constitution of the United States than the exclusive jurisdiction of each State over property and business transactions situate within its borders? It has been laid down by this Court in the case of McCullough *vs.* State of Maryland, "that a power to create implies a power to preserve; that a power to destroy, if wielded by another hand, is hostile to and incompatible with these powers to create and to preserve."

If Illinois has the power to permit property to be owned, transferred and possessed, business transactions to take place and choses in action to be created within her borders, has she not a power to preserve such property, the fruits of such business transactions and of such choses in action? The power to tax is the power to destroy.

If Connecticut has the power to tax property and business within the State of Illinois, she has the power to destroy such property and to prohibit such business transactions. She has the power of saying to the plaintiff in error, that he shall not enter into the State of Illinois and shall not loan money

therein, and shall be punished as for a crime, or fined to any extent if he ventures to perform such an act there.

Can it be supposed that the Constitution of the United States, that the terms of the Union between the States permit any such interference by one sovereignty with another? Taxation is the attribute of sovereignty, and the act of levying and collecting a tax is an act of sovereignty. When Connecticut ventures to tax property or business situate within the territorial limits of Illinois, she exercises an act of sovereignty therein, and thereby necessarily impedes and interferes with the exclusive sovereignty of the State of Illinois.

"But when States pass beyond their own limits and the rights of their own citizens, and act upon the rights of citizens of other States, there arises a conflict of sovereign powers, and a collision with the judicial powers granted to the United States which renders the exercise of such a power incompatible with the rights of other States and with the Constitution of the United States."

Ogden *vs.* Sanders, 12 Wheat., 213.

In this last-mentioned case it was held that proceedings by an insolvent, under the insolvent laws of a State, did not discharge the insolvent debtor with respect to a debt due to a non-resident creditor, on the ground that such creditor was not a party to the proceedings for a discharge, and that the Court of the domicil of the debtor had no jurisdiction over him.

"No State can exercise direct jurisdiction either over persons or property without its territory."

"The laws of one State have no operation outside of its territory, except so far as is allowed by comity."

Pennoyer *vs.* Neff, 95 U. S., 722.

3. Article 4, Section 1, of the Constitution of the United States declares that "full faith and

credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

The Statutes of Illinois provide for such taxation of persons, property and business within its territory, as that State in its sovereign pleasure deems best for its interest; whether or not it taxes the subject that Connecticut has attempted to tax by the statute complained of, is a matter of no importance. It is sufficient that Illinois has the power to tax that subject, and that her statutes deal with the subject of taxation of persons, property and business. The tax laws of Illinois are part of the contracts between the plaintiff and the debtor, Cummings.

"It is also the settled doctrine of this Court that the laws which subsist at the time and place of making a contract enter into and form part of it, as if they were expressly referred to or incorporated in its terms."

Edwards *vs.* Kearzey, VI. Otto, 595.
See also Walker *vs.* Whitehead, 16 Wallace, 314.

If Illinois fails to tax the subject upon which Connecticut has laid her tax, her sovereign will is expressed in that manner. By taxing that subject, or not taxing it, the State of Illinois provides for the kind of protection of that subject that consists in creating a uniformity of burden among direct competitors. Connecticut, in defiance of the expression of the sovereign will of Illinois, undertakes to disturb the equilibrium, and to destroy the equality of burden among direct competitors, by laying a tax upon a subject that belongs to a class that Illinois has thought fit either not to tax at all, or to tax to an extent and in a manner specified in her statutes. The Constitution of the State of Illinois, in defining her territorial boundaries, defines the extent of her exclusive dominion and jurisdiction. This Constitution is a "public

act" of the State of Illinois. It is claimed by the plaintiff in error, that by the action on the part of Connecticut herein complained of, full faith and credit is not given in Connecticut to the public acts of the State of Illinois, thereby meaning her laws on the subject of taxation and the provisions of her Constitution establishing her boundaries.

It is difficult to see how Section 1, Article 4, of the Constitution of the United States can be refused the construction, that by its force, each State is required to respect the sovereignty and the sovereign acts of every other State within its own borders.

No further faith and credit is claimed for the public acts of any State, than the *full* faith and credit named in the section. To give *full* faith and credit to a law, it is necessary to allow it full effect within the borders of the State that has passed the public act. When Connecticut undertakes to tax a subject that is liable to taxation by the State of Illinois, she interferes with the operation of the laws of Illinois; she acts upon their effect, and if she has the legal right to do so to any extent, she has the legal right to nullify the effect of those laws, so far as her physical power to do so may extend.

The provision in the section with respect to the prescription by Congress of the manner in which such acts shall be proved and the effect thereof, is a separate and distinct provision from that herein discussed. The failure on the part of Congress to avail itself of this power in no way affects or modifies the distinct provision that full faith and credit shall be given in each State to the public acts of every other State.

Is there any doubt that the meaning of this first provision of the section, is that rights acquired in one State by virtue of its public acts, as well as by its judicial proceedings, are to be respected in all other States?

If Congress had failed to legislate under the second provision of this section, could a man have been de-

prived in one State of rights or property acquired by him by judicial proceedings in another? Clearly such rights and property would have been protected by the first clause of the section; *how*, it is not necessary to determine, for the Courts would have described some manner of doing it by adherence to ordinary rules of evidence. This plaintiff in error acquired certain rights by the fact that his business transaction was carried on in Illinois. One of those rights was that his transactions and his lands should be taxed *only* by the sovereignty of Illinois. That right this Court is now asked to protect by confining the exercise of the sovereign powers of Connecticut to her own territorial limits.

Point IV.

THE STATUTE OF CONNECTICUT HERE COMPLAINED OF IS REPUGNANT TO THE 10TH SECTION OF THE 1ST ARTICLE OF THE CONSTITUTION OF THE UNITED STATES BY WHICH IT IS PROVIDED THAT "NO STATE SHALL * * * PASS ANY * * * LAW IMPAIRING THE OBLIGATION OF CONTRACTS."

It has previously been shown, that the Statute of Connecticut in taxing the bonds of the plaintiff in error, operates upon a subject to which must be assigned a situs outside of the territorial limits of that State, and that such taxation is a violation of the sovereignty of the State of Illinois, and not a proper exercise of the sovereign power of the State of Connecticut.

It follows from these propositions that the Statute of Connecticut complained of did not enter into, or form a part of the contracts evidenced by the bonds in question.

"It is also the settled doctrine of this Court, that "the laws which subsist at the time and place of

"making a contract enter into and form a part of "it, as if they were expressly referred to or incor- "porated in its terms."

Edward *vs.* Kearzey, 6 Otto, 595.
See also Walker *vs.* Whitehead, 16 Wall., 314.

It is impossible that the laws of two sovereignties should enter into and form a part of a contract, that is made and is to be performed, in a territory over which one of such sovereignties has no jurisdiction.

In the case of *Walker* against *Whitehead*, 16 Wall. 314, it was held that an act requiring a plaintiff to file an affidavit of taxes paid annually upon a promissory note, before bringing suit upon the note, impaired the obligation of the contract, because it barred the debt, and discharged the debtor, if the tax had not been paid. The decision was put upon the ground, that the law in question did not exist at the time of making the contract, and hence did not form a part of it.

The case of *Walker* against *Whitehead* might have been decided in the manner in which it was disposed of, upon the simple ground, that the plaintiff was required by the act in question to give to the State a portion of the fruits of his contract, by an act that did not enter into and form part of the contract. The value of a contract for the payment of money, to the creditor, consists in his power to receive and to retain for his own benefit the fruits of that contract. Any law that does not form part of a contract, and yet taxes it, is to be regarded as impairing its obligation, for the reason that it impairs the value of the fruits of the contract to the creditor, and hence impairs the value of the obligation of that contract. It is of no moment, so far as the creditor is concerned, whether a portion of the fruits of his contract is retained by the debtor, or taken from him by a State under the guise of taxation, by force of a law that did not enter into his

contract. The creditor suffers equally, whether the debtor retains a portion of the fruits of the contract for his own benefit or for the benefit of the State. The creditor suffers equally, whether a portion of the fruits of his contract be taken by the State before he receives it, or after he has received it. In any case, and in every case, in which the value of the contract to the creditor, or its fruits, are diminished by a statute that does not enter into and form part of the contract, the creditor is enabled to retain for his own benefit, a less sum of money, than, in the contemplation of the parties at the time of making the contract, he was to have retained, and by this sum, the value of his contract, the value of its obligation, the value of its fruits, is impaired and diminished.

This Court has decided in the Foreign-held Bond Case, that an act passed subsequently to the making of a contract for the payment of money, requiring a debtor to pay a portion of the fruits of the contract to the State of Pennsylvania, is an impairment of the obligation of the contract.

15 Wallace, 300.

In the case of *Walker* against *Whitehead*, this Court has decided that a statute that did not form part of the contract, requiring a creditor to pay a portion of the fruits of his contract, in the guise of a tax, into the State Treasury before he could maintain suit upon his contract, was an impairment of the obligation of the contract. Both these cases rest upon the broad principle that the creditor is entitled to retain and apply to his own benefit the fruits of the contract, so far as it was intended in the minds of the parties at its inception, that the creditor should so receive benefit, and any law that interferes with the ultimate and contemplated beneficial result to the creditor of the performance of the contract, impairs its obligation.

"One of the tests that a contract has been im-
"paired is, that its *value* has by legislation been

"diminished. It is not by the Constitution to be "impaired at all."

Planters' Bank *vs.* Sharp, 6 How., 301.

The position is not here taken that any tax imposed upon a contract after it is made, that did not exist when the contract was made, is invalid. It may well be that every contract is made subject to the right of the State within whose borders it is made, at any future time to tax it, and that such right underlies and enters into the contract. Such a position is perfectly consistent with the present contention of the plaintiff in error, namely, that the right to tax a contract does not exist in favor of a State *without* whose borders the contract is made, and whose laws, by no possibility, can be said to form part of the contract.

Point V.

THE STATUTE OF CONNECTICUT HERE COMPLAINED OF IS REPUGNANT TO THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, BY WHICH THE STATES ARE FORBIDDEN TO DEPRIVE ANY CITIZEN OF LIFE, LIBERTY OR PROPERTY "WITHOUT DUE PROCESS OF LAW."

This amendment to the Constitution is violated by the provisions of the Statute of Connecticut, that permit and direct the real estate of the plaintiff in error to be levied upon and sold, by reason of a tax imposed upon him in consequence of his ownership of the bonds described in the record.

(*a*) The threatened deprivation of the plaintiff in error of his property by the defendant in error, under authority of tax warrants, appears beyond dispute as an adjudicated fact. At folio 42 of the record it appears, as found in

the decree of the Superior Court, "that the respondent (the present defendant in error) thereafter, on the 2d day of April, 1873, levied his said warrants on the real estate of the petitioner, described in his petition, and advertised the sale thereof in a public newspaper, pursuant to law, said sale to take place at the signpost in said Woodbury, on the 7th day of June, 1873, for the purpose of paying said taxes, interest and costs."

The first steps of a physical "taking" of the real estate described in the petition have been had by the advertisement for sale of the property. That the owner will be deprived of his property, in favor of the purchaser at the sale, is the necessary and inevitable consequence of those steps. The whole power of the State of Connecticut, can be brought into requisition to place the purchaser at this tax sale in possession of the property sold by virtue of the tax warrants. Is it necessary to wait until such purchaser has brought an action of ejectment on his tax title, before raising the question of the invalidity and unconstitutionality of the statute under which the sale is about to take place? It may be urged that, if the Statute of Connecticut be invalid, the owner will not be deprived of his property by the sale under the tax warrants; that he will be left in possession and in the enjoyment of the property, notwithstanding the tax title may be outstanding. It is an adjudicated fact in the case, "that to prevent said sale and the casting of a cloud upon the title to his said land he prayed out and caused to be served his said injunction in this suit" (Record, fol. 42). This language in the decree amounts to a finding of fact, that the sale of the real estate in question under the tax warrants would have cast a cloud upon the title to the land of the plaintiff in error. The question then resolves itself into

this: Is a man deprived of his property when a cloud is cast upon his title to land? Clearly, his land is made less valuable by the existence of a cloud. Its sale or mortgage is interfered with by the existence of the cloud. One's property in land is measured by the rights one has therein. The land can only be enjoyed by the exercise of those rights. We speak of a man's property, but the material thing referred to is only the property of a man because and in so far as he has certain rights in it. If he cannot exercise those rights he has them not, for all practical purposes. If he once had rights with respect to a piece of land, and by the act of some person or sovereignty he no longer has those rights, or if they be less valuable to him than theretofore, is he not "deprived" of them by this person or sovereignty? Clearly so. When Connecticut, therefore, by the exercise of authority conferred upon the Collector of the Town of Woodbury, under tax warrants, levies on the real estate of the plaintiff in error, and threatens to sell it, and thereby to create a cloud upon his title, she deprives the plaintiff in error of his property.

That the plaintiff in error will be deprived of his property if the enjoined sale goes on, if the taxes complained of be invalid, as claimed, sufficiently appears from the fact that the Court below entertained the cause and originally granted the injunction.

(*b*) The action of the defendant in error in depriving the plaintiff in error of his property, by levying the tax warrants in question, and by proceeding to sell the land, was "without due process of law."

Jurisdiction of the thing taxed is essential in order that the power of taxation shall be exercised by "due process of law."

No question is here raised that the Statutes of Connecticut were not strictly pursued by the

defendant in error. All the power and authority that these statutes could confer upon the collector, he possessed in doing the acts complained of. The ground is here taken that the statutes themselves did not provide for "due process of law," because in authorizing the taxation of the bonds of the plaintiff in error, situated in Chicago, they were directing the taxation of property situated, or acts performed outside of the territorial limits of Connecticut. *Taxation*, indeed, is "due process of law;" an extra-territorial exaction is not taxation. It is taking private property without compensation. Such a proceeding is not "due process of law." Taking property from A, and giving it to all the inhabitants of a State, involves the violation of the same principle, as taking property from A and giving it to B, and is equally objectionable. If the power to be exercised be the judicial power, jurisdiction of the person or thing proceded against is indispensable. There can be no "due process of law" in the courts without jurisdiction. No matter how elaborate be the judicial or statutory machinery, if there be no jurisdiction over the subject matter involved there is no "due process of law," and property taken, whether by legislative mandate or judicial proceedings, if taken without jurisdiction on the part of the power taking it over the subject matter proceeded against, is taken without "due process of law." The exercise of the taxing power is not exempt from the necessity of possessing jurisdiction of the subject matter taxed. Whether or not that jurisdiction exists, is to be determined by the answer to the question, whether or not the thing taxed was within the limits of the taxing state at the time of the exercise of the taxing power.

The reason for this limitation of the exercise of the taxing power to subjects within the jurisdiction

of the taxing sovereignty, is found in the absence of protection by the sovereignty to the thing taxed, if that thing be outside of the territorial limits of the taxing State. These principles must be considered well established.

"Taxation is, in any view, taking private prop-
" erty for public use; and it cannot be so taken
" without an equivalent, both as to the government
" or the citizens. It is not competent to convert
" private property to public use, by way of taxa-
" tion, and without compensation, any more than
" by any other mode."

Redfield.

"Where is no protection, there can be no claim to allegiance or obedience."

"The power of taxation is the correlative of protection and jurisdiction."

The U. S. *vs.* Rice, 4 Wheaton, 246.

"It is an eternal principle of justice that jurisdiction cannot be justly exercised by a State over property not within the reach of its process; that is, property which it cannot protect."

Miles *vs.* Duryee, 7 Cranch, 481.

"The legal fiction that personal property follows the residence of the owner has no extra territorial effect. The jurisdiction of the State having the actual situs of the property excludes the jurisdiction of another State claiming under the legal fiction that personal property follows the person."

Green *vs.* Van Buskirk, 7 Wallace, 139.
Affirmed in Crapo *vs.* Kelly, 16 Wallace, 139.

"Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the Legislature of a State should enact that the citizen or property of another State or county should be taxed in the same manner as the persons and property within its own limits and

subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. *Jurisdiction is as necessary to valid legislation as to valid judicial action.*"

St. Louis *vs.* The Ferry Co., 11 Wallace, 430.

"The power of taxation, however vast in its character and reaching in its extent, is necessarily limited to the subjects *within the jurisdiction of the State;* these subjects are persons, property and business."

"That property lying beyond the jurisdiction of the State is not a subject upon which her taxing powers can be legitimately exercised. Indeed, it would seem that no adjudication would be necessary to establish so obvious a proposition."

Foreign held Bond Case, 15 Wallace, 319.

"Governments are organized for the protection of persons and property, and the expenses of the protection may very properly be apportioned among the persons protected, according to the value of their property protected."

Tappan *vs.* Merchants' Bank, 19 Wallace, 490.

"Where there is no jurisdiction, neither as to the person nor the property, the imposition of a tax would be *ultra vires* and void. We proceed, therefore, to the second objection to the act, that it imposes taxes upon property beyond the jurisdiction of the State. If such be the fact, the tax to that extent is invalid; for the power of taxation of every State is necessarily confined to subjects within its jurisdiction."

The Delaware Railroad Tax, 18 Wallace, 229.

"There is no such thing in the theory of our Governments, State or National, as unlimited power in

any of these branches. The executive, the legislative and the judicial departments are all of limited and defined powers. There are limitations of power which arise out of the essential nature of all free governments, implied reservations of individual rights without which the social compact could not exist, and which are respected by all free governments entitled to the name. Among these is the limitation of the rights of taxation."

Loan Association *vs.* Topeka, 20 Wallace, 658.

(*c*) Kirtland's property to the amount of these taxes is taken from him, if he is forced to pay them. If the taxes are imposed upon property that is beyond the jurisdiction of Connecticut to tax, the amount of the taxes is taken from Kirtland without "due process of law." It is not sufficient that this property is sought to be taken from him by authority of a statute. He is mulcted by means of a forced exaction, laid upon property over which the State of Connecticut has no jurisdiction, and such a proceeding cannot be justly called "due process of law."

Point VI.

THE STATUTE OF CONNECTICUT HERE COMPLAINED OF IS REPUGNANT TO SECTION 2, ARTICLE IV, OF THE CONSTITUTION OF THE UNITED STATES, BY WHICH IT IS PROVIDED THAT "THE CITIZENS OF EACH STATE "SHALL BE ENTITLED TO ALL PRIVILEGES AND IMMU- "NITIES OF CITIZENS IN THE SEVERAL STATES."

This provision was substantially contained in the 4th article of the Articles of Confederation of the

States, as follows: "That the better to secure and "perpetuate mutual friendship and intercourse "among the people of the different States in this "Union, the free inhabitants of each of these "States, paupers, vagabonds and fugitives from "justice excepted, shall be entitled to all the privi- "leges and immunities of free citizens of the several "States, and the people of each State shall have free "egress and ingress to and from any other State, "and shall enjoy therein all the privileges of trade "and commerce, subject to the same duties, impo- "sitions and restrictions as the inhabitants thereof "respectively."

In the Slaughter-house Cases, 16 Wall., 75, this Court says, referring to the above-mentioned article of the Articles of Confederation and the second section of the fourth article of the Constitution of the United States: "There can be but little question that "the purpose of both these provisions is the same, "and that the privileges and immunities intended "are the same in each. In the Articles of Confed- "eration we have some of these specifically men- "tioned, and enough perhaps to give some general "idea of the class of civil rights meant by the "phrase."

(a) There is no doubt that the right to loan money within a State, is guaranteed by this clause of the Constitution to a citizen from another State, upon the same footing with the citizen of that State, and with no greater charge by way of taxation than the citizens of that State. Every business and every occupation is thrown open by this clause of the Constitution to the citizens of other States, to be carried on in any State with privileges equal to those of the citizens of that State, and the State in which the business or occupation is carried on, is prohibited from imposing any burden, by way of taxation or otherwise, upon that business, that will discriminate against citizens of other States in favor of her own citizens.

Corfield *vs.* Corzell, 4 Washington's C. C., 371:

"The inquiry is, what are the privileges and immu-
"nities of citizens of the several States? We feel
"no hesitation in confining these expressions to
"those privileges and immunities which are funda-
"mental, which belong of right to the citizens of
"all free governments, and which have at all times
"been enjoyed by citizens of the several States
"which compose this Union, from the time of their
"becoming free, independent and sovereign. What
"these fundamental principles are, it would be
"more tedious than difficult to enumerate. They
"may all, however, be comprehended under the
"following general heads: Protection by the Gov-
"ernment, with the right to acquire and possess
"property of every kind, and to pursue and obtain
"happiness and safety; subject, nevertheless, to
"such restraints as the Government may prescribe
"for the general good of the whole."

Paul *vs.* Virginia, 8 Wall., 168: "It was
"undoubtedly the object of the clause in ques-
"tion, to place the citizens of each State upon
"the same footing with citizens of other States,
"so far as the advantages resulting from citizen-
"ship in those States are concerned. It relieves
"them from disabilities of alienage in other
"States; it inhibits discriminating legislation
"against them by other States; it gives them the
"right of free ingress into other States, and egress
"from them; it insures to them in other States the
"same freedom possessed by the citizens of those
"States in the acquisition and enjoyment of prop-
"erty and in the pursuit of happiness, and it se-
"cures to them in other States; the equal protec-
"tion of their laws. It has been justly said that
"no provision in the Constitution has tended so
"strongly to constitute the citizens of the United
"States one people as this."

Williams *vs.* Bruffy, VI. Otto, 176: "This pro-
"vision has been held in repeated adjudications of
"this Court, to prohibit discriminating legislation by
"one State against the citizens of another State,

"and to secure to them the equal protection of its "laws, and the same freedom possessed by its own "citizens in the acquisition and enjoyment of prop-"erty."

It is obvious, therefore, that the intention of this clause of the Constitution is, that citizens of different States should be placed upon a perfect equality in any State in the transaction of business within that State, and that there should be no discriminating legislation by any State, the effect of which would be to introduce an inequality of rights in the transaction of such business.

The cases that have been cited have arisen under a condition of facts, in which a State has endeavored to discriminate in favor of its own citizens against the citizens of another State. The question has never arisen in this Court, so far as it can be ascertained from reported cases, that is presented in this case. The question is now brought before this Court, whether or not a State can place its own citizens at a disadvantage, in transacting business in another State, with citizens of that other State or of a third State, under the guise of alleged taxation by the discriminating State of the property owned, the rights protected, or the business performed by its citizen, outside of its territorial limits, and within the boundaries of a sister State.

The State of Connecticut has attempted to tax the plaintiff in error upon his bonds, and with respect to business transactions carried on by him in the State of Illinois. She has attempted to burden her citizens with the disabilities of alienage in Illinois. As the State of Connecticut has no physical power to mulct, under the guise of taxation, the citizens of Illinois or of States other than herself, by reason of business transactions carried on within the State of Illinois, therefore, by the statute in question, she discriminates against the plaintiff in error, in favor of persons other than her own citizens, who may transact the business of loaning money within the State of Illinois. Does she not violate Section 2,

a State is not entitled to protection against his own State with respect to equality of burden upon property or business situated within that State. It is undoubtedly the doctrine of this Court, that as against his own State, a citizen can not seek redress under this clause of the Constitution, for any failure to secure to him within the borders of that State, the privileges and immunities that he conceives himself entitled to, with respect to property or business within the borders of that State.

16th Wallace, 36, Slaughter-house Cases: "The "constitutional provision there alluded to did not "create those rights which it called privileges and "immunities of citizens of the States. It threw "around them in this clause no security for the "citizen of the State in which they were claimed or "exercised; nor did it profess to control the power "of the State Government over the rights of its "own citizens.

"Its sole purpose was to declare to the several "States that whatever those rights, as you grant or "establish them to your own citizens, or as you "limit or qualify or impose restrictions in their ex-"ercise, the same, neither more or less, shall be "the measure of the rights of citizens of other "States within your jurisdiction."

See also Bradwell *vs.* The State, 16 Wall., 130.

Nor can this provision of the Constitution be construed to secure to the citizens in other States the peculiar privileges conferred by their own laws.

Paul *vs.* Virginia, 8 Wall., 168.

These propositions, however, are entirely distinct from the one for which the plaintiff in error contends, namely, that his State shall not, under the guise of taxation, deny to him the right of enjoying in another State the privileges and immunities allowed by that State to her own citizens, and to him as well, which privileges and immunities it is

Article IV. of the Constitution of the United States? Is not the plaintiff in error denied an equality of footing in the transaction of this business within the State of Illinois, just as effectually as if the State of Illinois, by a system of taxation, had barred her gates against his access, and discriminated against his transaction of this business within her limits, in favor of her own citizens? It is impossible to examine the cases in which this Court has determined that this provision of the Constitution has been violated, without seeing that the result there deprecated and forbidden by this Court, is as effectually arrived at by the action of a State in fining one of her own citizens, by reason of his transaction of a piece of business in another State, as by the action of that State in fining the citizens of another State, for the transaction of a piece of business within her limits.

Ward *vs.* Maryland, 12 Wall., 430: "Attempt will "not be made to define the words 'privileges and "'immunities,' or to specify the rights which they "are intended to secure and protect, beyond what "may be necessary to the decision of the case be"fore the Court. Beyond doubt those words are "words of very comprehensive meaning, but it will "be sufficient to say that this clause plainly and "unmistakably secures and protects the right of a "citizen of one State to pass into any other State of "the Union for the purpose of engaging in lawful "commerce, trade or business without molestation; "to acquire personal property; to take and hold real "estate; to maintain actions in the Courts of the "State, and to be exempt from any higher taxes or "excises than are imposed by the State upon its "own citizens."

It will doubtless be argued, that the statute in question comes within the cases in which this Court has held, that this section of the Constitution of the United States was not intended to protect a citizen against action by his own State. It will be seen, however, that these cases only determine the proposition, that a citizen of

conceded cannot be denied to him by that other State, by reason of the protection afforded by this section of the Constitution of the United States.

In the Passenger Tax Cases, 7 How., 253, no exception is made to the limitation upon the power of the States to tax passengers coming into the State, in favor of any right in the State to tax her own citizens under similar circumstances.

7 Howard, 283, Passenger Tax Cases, *C. J.:*

"Living, as we do, under a common government, charged with the great concerns "of the whole Union, every citizen of the "United States, from the most remote States "or Territories, is entitled to free access, not "only to the principal departments established at "Washington, but also to its judicial tribunals and "public offices in every State in the Union.

"For all great purposes for which the Federal "Government was formed, we are one people, with "one common country; we are all citizens of the "United States, and as members of the same community must have the right to pass and repass "through every part of it without interruption, as "freely as in our own States, and a tax imposed by "a State for entering its territories or harbors is inconsistent with the rights which belong to citizens "of other States as members of the Union, and "with the objects which that Union has intended "to attain. Such a power in the States could produce nothing but discord and mutual irritation, "and they very clearly do not possess it."

In that case, and in the case of Crandall against the State of Nevada, 6 Wall., 35, the unconstitutionality of the taxes complained of, is put upon the inability of any State to interfere with free intercourse between the States, and the right to citizens to pass and repass from one State to another at pleasure. It was the fact, that the alleged tax interfered with the privileges and immunities of citizens of the several States, and with their right to carry

on intercourse with other States, not the consideration that the tax might possibly affect persons other than citizens of the State imposing the tax, and was therefore invalid, that governed this Court in deciding in the cases cited that the taxes complained of were unconstitutional.

By the Constitution of the United States, the right is guaranteed to the plaintiff in error to go into the State of Illinois, loan his money there and return to the State of his residence, without bearing any greater burden by way of taxation or otherwise, by reason of his transactions in the State of Illinois, than would be borne by citizens of other States transacting the same business within the State of Illinois.

The State of Illinois alone has jurisdiction over the business transactions evidenced by the bonds in question, and alone has the right to tax them, notwithstanding Connecticut has the physical power to wring a sum of money from the plaintiff in error, under the guise of taxation, based upon the performance of his business in Illinois, and his ownership of its record and of the evidence of his rights.

The question is here presented whether the State of Connecticut shall be permitted to deny to her own citizens the privileges and immunities allowed by the State of Illinois to her own citizens, and to the citizens of other States who transact a similar business within her borders. If Connecticut possesses the power to the extent claimed under the statute in question, it must be admitted that she possesses the power to absolutely prohibit her citizens from transacting business within the State of Illinois, to declare such business to be unlawful, and its performance the commission of a crime on the part of her citizens, for which she may punish her citizens by imprisonment and by confiscation of all their property.

In this connection the language of this Court in the case of Crandall against the State of Nevada, 6 Wall., 35, seems pertinent: "It will be observed

"that it was not the extent of the tax in that case "which was complained of, but the right to levy "any tax of that character. * * * * But if a "State can tax a railroad passenger one dollar, it "can tax them one thousand."

(*b*) The defendant in error argues that Connecticut has the power to tax the contracts of the plaintiff in error for the payment of money. This can only be on the ground that the laws of Connecticut enter into and form part of the Illinois contracts. If the bonds of the plaintiff in error are affected by the power of taxation residing in the State of Connecticut, then this power falls upon the debtor, Cummings, and the tax of Connecticut is actually levied upon him as the borrower, and falls upon his property.

Weston *vs.* City of Charleston, 2 Peters, 462.

An examination of sections 35, 36 and 37, of the Connecticut Statute (page 13, *supra*), shows that when a mortgagor, a resident of Connecticut, is taxed in that State with reference to his land therein situated, he can have the amount of the mortgage deducted, and thereupon, *and not otherwise*, the mortgagee is taxed. This is evident, for the reason that no provision is made for listing the mortgage against the creditor, except in such a case. Taking the whole statute together, it appears that money loaned on interest in Connecticut can only be listed against the creditor in the town where the debtor resides, and only when the debtor demands the deduction. No such deduction is allowed by the Statutes of Illinois. It follows, therefore, that Cummings, the maker of the bonds of the plaintiff in in error, and the mortgagor, pays a double tax upon the amount of his mortgaged bonds held by the plaintiff in error; one to the State of Illinois, and one to the State of Connecticut.

People *vs.* Hibernian Bank, 51 Cal., 243.

Connecticut, therefore, discriminates against the citizens of other States in favor of her own citizens owning lands in Connecticut, in the business of borrowing money on bond and mortgage from her residents. She denies to citizens of other States the privileges and immunities awarded to her own citizens. To be consistent, she should exempt bonds and mortgages from taxation, in the hands of her residents, secured upon lands situated in other States, in which no deduction is allowed to the mortgagor in the assessment of his land for taxation by reason of the existence of the mortgage lien.

Point VII.

IF THE STATUTE OF CONNECTICUT COMPLAINED OF IS CONSTITUTIONAL, ITS EFFECT IS TO RESTRICT THE MAKING OF SIMILAR CONTRACTS, THE RESULT OF BUSINESS TRANSACTIONS HAD OUTSIDE OF THE STATE OF CONNECTICUT.

It is evident that the bonds taxed in this case, have their origin solely by virtue of the business intercourse and business transactions of the plaintiff in error with the debtor, Cummings, in the State of Illinois. The bonds do not propose that there shall be any business intercourse between the parties, except within the State of Illinois.

If the State of Connecticut has a right to tax these contracts, and is allowed to collect the tax on them from the plaintiff in error, that state of facts was either present in the minds of the parties when the bonds were made, or it was not. What was the effect upon the transaction evidenced by the bonds, if those bonds were made with a view to the power of Connecticut to tax the plaintiff in error with respect to them?

If all those engaged in the business of loaning money in Illinois were obliged to pay a similar tax at their respective places of residence, it is obvious that the debtor, Cummings, could not have borrowed from the plaintiff in error, except by agreeing to pay the tax of the plaintiff in error, and including it in the amount of interest reserved upon the bonds. If the plaintiff in error in Illinois comes into competition, as most assuredly he does, with those who do not have to pay a similar tax at their respective places of residence, then the debtor, Cummings, did not have to pay a rate of interest sufficiently large to include the tax of the plaintiff in error, and the plaintiff in error derives less profit from the business of loaning money in Illinois than those who do not have to pay a similar tax at their respective places of residence. The effect of this is to discourage the citizens of Connecticut from loaning money in Illinois, and to drive them to a class of investments that will enable them to escape taxation upon their invested capital, or to realize a rate of interest as high as their untaxed competitors in Illinois.

2. If the parties did not contract in Illinois with reference to the power of Connecticut to tax the plaintiff in error upon the bonds in question, then the plaintiff in error does not receive sufficient interest to yield him the same amount of interest that his competitors in the business in Illinois receive from similar investments, in addition to the amount of tax sought to be collected by the State of Connecticut. In other words, the State of Connecticut diminishes the profits that he anticipated, and for which he contracted, as the result of business transactions carried on in the State of Illinois. The effect of this is again to diminish the loaning of money in the State of Illinois, and to induce the citizens of Connecticut, to so invest their money as to escape taxation upon their invested capital.

The policy of Connecticut as evidenced by this statute, is to force the capital of her citizens to stay

at home, and to restrict its free investment in other States, and its free use in the development of those States.

Is the adoption and successful prosecution of such a policy possible under the terms of the Constitution of the United States? That is the question involved in this case.

Point VIII.

THE INJUNCTION OBTAINED BY THE PLAINTIFF IN ERROR AT THE INCEPTION OF THIS CAUSE SHOULD BE DIRECTED TO BE MADE PERPETUAL WITH COSTS.

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ASHBEL GREEN,
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JULIEN T. DAVIES,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

CHARLES W. KIRTLAND,

PLAINTIFF IN ERROR,

vs.

LEONARD L. HOTCHKISS.

In Error to the Supreme Court of Errors, Litchfield County, State of Connecticut.

BRIEF FOR DEFENDANT IN ERROR.

Supreme Court of the United States.

CHARLES W. KIRTLAND,
Plaintiff in Error,
vs.
LEONARD L. HOTCHKISS.

In Error to the Supreme Court of Errors, Litchfield County, State of Connecticut.

Brief for Leonard L. Hotchkiss, original Respondent, now Defendant in Error.

SUMMARY OF FACTS.

The important facts in this case condensed from the record are as follows, viz:

On the first of October 1869, Charles W. Kirtland, of Woodbury, Connecticut, and an inhabitant of, and residing in said town, had $18,000 invested in bonds, in the city of Chicago, State of Illinois. Said bonds were secured on real estate located in said city of Chicago, by deeds of trust, a copy of one of which is set out in the record, the rest being identical, except in amounts and names.

The said Kirtland did not return a list or account of said bonds, or of the money invested in them, to the assessors of said Woodbury, in the list of real and personal property owned by him and liable to taxation on the said first of October 1869.

Afterwards and within the time required by law the Board of Relief of said town, after due notice to said Kirtland, added said sum of $18,000 to his list as property belonging to him liable to taxation in said town.

On the first of October 1870, said Kirtland had the sum of $20,000 invested in like bonds and secured in the same manner as the aforesaid $18,000, and, as in the year previous, failed and neglected to return said property in the list of real and personal property owned by him, liable to taxation in said Woodbury, on the first of October 1870.

Afterwards, and within the time prescribed by law, said Board of Relief, after due notice to said Kirtland added to his said list for 1870, said sum of $20,000 as property belonging to him liable to taxation in said Woodbury.

A legal tax was laid by said town of Woodbury upon each of said

lists of 1869 and 1870, and the legal steps taken for collecting the same.

The Respondent, Hotchkiss, was the duly appointed tax collector, and as such duly levied his tax warrant on the real estate of said Kirtland, upon his refusal to pay said taxes, and advertised it for sale, whereupon the petition, in the record set forth, was served upon him and the proceedings thereon had which the record discloses.

The finding of facts and reservation contained in the transcript of record page 5, fol. 14, shows that the only question upon which the parties were at issue and were heard in the Connecticut Court was, "*whether said bonds owned by the Petitioner, drawn in the form and secured in the manner and form as above stated, were or were not liable to taxation under the statute in such cases made and provided.*" This fact kept in mind disposes of a very large number of the questions attempted to be raised by the motion in Error.

The Statutes of Connecticut applicable to the questions at issue are the following, viz:

Title 64, chap. 1, sec. 7, page 708, General Statutes Revision of 1866, "all real estate and personal property not herein exempt from taxation shall be liable to taxation as follows. * * * * * * * * *

Sec. 8. Personal property in this State or elsewhere, not expressly exempted by this act shall be deemed for the purposes of taxation to include all moneys, credits, choses in action, bonds, notes, stocks, (except United States stock) goods, chattels or effects or any interest therein. * * * * * * * And such personal property or interest therein, being the property of any person resident in this State shall be valued and assessed at its just and true value at the time of such assessment and set in the list at its actual valuation, in the list of the town where the owner resides except when otherwise provided, but this section shall not be deemed to embrace money or property actually invested in the business of merchandizing or manufacturing when located out of this State."

* * * * * * * *

Sec. 24, page 713. "It shall not be necessary to include in the list of any person liable to be assessed under the provisions of this act any property situated out of this State, when it can be made satisfactorily to appear to the assessors, that the same is fully assessed and taxed in such State, to the same extent as is other like property owned by citizens of such State."

Secs. 25, *et seq*, make it the duty of every person liable to be taxed to make out and present to the assessors a list embracing all his taxable property, and make oath to the same, and if he shall neglect or refuse so

to do, it is made the duty of the assessors to fill out a list for him, putting in all taxable property which they have reason to believe is owned by him, etc.

It is unnecessary to quote these sections in full as no question arises upon them and the general substance is given only so as to present as complete a view of the Connecticut system of taxation as may be necessary to the full understanding of the case at bar.

Sec. 33, page 714. "The Board of Relief in each town shall meet on the first Monday in January annually * * * * and shall equalize and adjust the valuations and assessment lists of said town whether appeals from the doings of the assessors shall be made to them or not, and said board in equalizing and adjusting said lists may increase the lists of any person by increasing the items of personal property therein contained, or by increasing the number, quantity or amount of any such item, or by adding to such list any item of property or estate or interest therein, which is taxable by the provisions of this act which may have been omitted by the assessors, and which such board of relief may judge should be added to the list of such person." * * * * *

In 1872 the Legislature enacted, that "all moneys loaned by residents of this State to any person, persons or corporations out of this State, as money at interest whether secured by mortgage or otherwise, and all bonds issued by and loans made to any railroad company located out of the State of Connecticut, and owned and made by any residents of this State shall be held and deemed liable to taxation, and included among the taxable property mentioned in the eighth section of the act to which this is an addition; any law or custom exempting the same from taxation notwithstanding."

Public Acts of 1872, page 107.

This Act is clearly declaratory.

The Supreme Court of Errors of Connecticut says of it, Kirtland vs. Hotchkiss, 42 Conn. 436, "we regard it as explanatory of the act (Sec. 8 supra) under consideration and not an alteration thereof."

Such are the facts and such is the law, under which the Defendant in error acted. Upon them the Supreme Court of Errors of Connecticut dismissed the petition, and this court is asked to over-rule that decision.

The only points decided by the Supreme Court of Errors of Connecticut are:

1st. That the loans in question are taxable under the provisions of the Connecticut Statutes.

2nd. That the situs of the property taxed is within said State, and therefore,

3rd. That the Legislature of Connecticut has the right to require the petitioner to pay taxes on said loan.

In 42 Conn. R., p. 435, in deciding this case said Court says, (and we adopt said decision as part of our argument before this Court and for that purpose, and as our best argument, incorporate it in full into our brief.)

"The question for our consideration may be stated thus: Is a citizen of this State liable to pay taxes on money loaned out of the State? The question resolves itself into two inquiries: First, does the statute require money so loaned to be taxed? Second, has the legislature power to tax it?

"Concerning the first question little need be said, the statute in force when the taxes under consideration were levied is as follows: 'Personal property in this State or elsewhere not expressly exempted by this act shall be deemed for the purposes of taxation to include all moneys, credits, choses in action, bonds, notes, stocks, (except United States stock) goods, chattels or effects, or any interest therein; all ships and vessels propelled by steam or wind, whether at home or abroad, or whether registered, enrolled or licensed in this State or elsewhere, or any interest either legal or equitable therein, and such personal property or interest therein being the property of any person resident in this State, shall be valued and assessed at its just and true value, at the time of such assessment and set in the list at its actual valuation, in the list of the town where the owner resides, except when otherwise provided; but this section shall not be deemed to embrace money or property actually invested in the business of merchandizing or manufacturing, when located out of this State.'

Gen. Statutes 1866, p. 709, § 8.

"The first part of this Statute is broad enough to include not only debts due from citizens of other States, but also goods and chattels without the State. The latter however are exempt by the terms of Sec. 24, p. 713; the 8th Section also exempts money or property invested in the business of merchandizing or manufacturing out of the State. These exemptions are in the nature of exceptions and clearly imply that but for them all such property would be taxable by the letter of the Statute. There is no such exception in favor of debts due from parties out of the State, and hence the reasonable construction of the Statute is that such debts are taxable.

"To remove all doubt on the subject the legislature in 1872 made them taxable in more explicit terms.

"We regard that Statute as explanatory of the act under consideration and not an alteration thereof. We entertain no doubt therefore as to the intention of the legislature.

"Indeed this point is not seriously controverted. The second and most important question in the case is whether the legislature has power to tax money so invested.

"Unlike some of the States we have no constitutional provision limiting and defining the power of taxation.

"The case therefore does not depend upon the construction of any particular provision of our constitution, but it involves a consideration of the principles of natural right and justice.

"The Petitioner insists that it is a case of extra-territorial taxation; that the legislature has attempted to reach its hand beyond the limits of the State, and lay hold of property situated in other jurisdictions and subject it to taxation here. It is agreed that real estate cannot be so reached, and visible, tangible, personal property is practically upon the same footing by the provisions of our Statute. As we have already seen the Statute clearly distinguishes between choses in action and goods and chattels.

"The reasons for this are obvious; and they are reasons not only for the exercise of the power of taxation in respect to the former but also to some extent for the existence of the power as well.

"We do not care however to refer to reasons based upon expediency or public policy.

"Although arguments may be drawn from both these sources, sustaining the power contended for, yet they are in the main arguments which address themselves to the discretion of the legislature.

"We shall therefore limit our discussion to two inquiries. First, as to the place and manner of taxing debts heretofore, and legislation affecting the question. Second, as to the nature and character of the property under consideration.

"Our present Statute expressly requires the taxation of 'notes, bonds and stocks, (not issued by the United States) moneys, credits, choses in action,' &c. 'And that such property belonging to any resident in this State shall be set in his list in *the town where he resides* at its then actual valuation except when otherwise provided; but money secured by mortgage upon real estate in this State shall be set in the list and taxed only in the town where such real estate is situated.'

"This Statute assumes that notes, bonds and other choses in action for the purposes of taxation are situated where the creditor resides. In this respect the present does not differ materially from prior Statutes since money at interest has been the subject of taxation. It is believed that it has been uniformly taxed where the creditor resides, except in the single instance of money secured by mortgage on real estate, in which case it is taxable where the real estate is situated. This provision is of modern origin and grew out of another provision allowing the debtor to have deducted from his own list the amount of the debt, and requiring it to be set in the list of the creditor.

"In the Revised Statutes of 1866, in the list of property exempt from taxation, are found the State bonds issued under the Act of 1865.

"In 1869 certain towns were authorised to issue bonds to aid in the construction of railroads; and it is provided that they 'shall be exempt from taxation in the hands of the holders of such bonds.' And the bonds of certain railroads in this State are in like manner exempt. These Statutes clearly imply that such bonds if not thus exempted would be taxable under the operation of the general statute in the towns and cities where the holders thereof resided.

"The Act of Congress of March 3rd, 1863, authorising the issue of bonds, &c., provides as follows: 'And all the bonds and treasury notes or United States notes issued under the provisions of this Act shall be exempt from taxation *by or under State or Municipal authority.*' U. S. Stat. 1863, p. 710. But for this provision such bonds would have been taxable; and they could only have been taxed by State or Municipal authority through the holders; clearly showing that such bonds for the purpose of taxation have a *situs* where the owner resides.

"We proceed in the second place to consider the nature and character of a debt or chose in action. It has not a visible, tangible form. The note, bond, or account even, may be evidence of a debt but it is not the debt itself. The specific money when loaned and received by the borrower is no longer the property of the creditor, it is soon merged in the circulating mass and the creditor can neither identify and claim it, nor put his hand upon any property purchased by it and say that that is his. The money may be invested in real estate or manufacturing, or merchandizing, or speculation. It may prove a profitable investment, or it may in a short time prove a total loss. It is all the same to the creditor so long as his debtor's ability to pay is unimpaired. He has simply a right to receive a given sum of money with interest or damages for its detention. It is a personal right and accompanies the person of the creditor. The debtor is under a corresponding obligation to pay the demand. The right to receive is valuable and through it an income is derived. That right may with propriety be taxed. The obligation to pay is a burden and has never to our knowledge been the subject of taxation. It seems to us therefore that the appropriate place to tax money at interest is where the creditor resides; and that for that purpose it may with propriety be said to be located with the creditor.

"In respect to the question now under consideration there is a strong analogy between a money demand evidenced by a note or bond, and shares of stock in a corporation. The Supreme Court of the United States has decided that shares of stock in National banks are property separate and distinct from the property of the corporations which they represent. Van Allen vs. Assessors, 3 Wall. 573; Bradley vs. The People, 4 Wall. 459; National Bank vs. Commonwealth, 9 Wall. 353. In the latter case the State of Kentucky levied a tax upon the shares of stock in the bank, payable by the cashier. It was held that there was

a distinction between the shares of stock and the capital of the bank; that the latter when invested in government bonds was not taxable, that shares of stock notwithstanding the investment of the capital in government bonds were taxable.

"In the case of Minot vs. The Philadelphia, Wilmington & Baltimore R. R. Co., 18 Wall. 206, a distinction is made between shares of railroad stock and the property of the corporation. The State of Delaware levied a tax of one-fourth of one per cent upon the actual cash value of every share of the capital stock of the Defendant corporation with the proviso that the company should only be required to pay the tax on such number of the shares of its capital stock as would be in that proportion to the whole number of shares which the length of the road within the limits of the State should bear to the whole length of such road. It was claimed that this was a tax upon the shareholders, and that as the proportion of shareholders residing in the State was less than the proportion of the length of the road lying within the State, it was an attempt to tax property beyond the jurisdiction of the State.

"In respect to this claim the Court on page 229, says: 'If such be the fact the tax to that extent is invalid for the power of taxation of every State is necessarily confined to subjects within its jurisdiction.' * * * * 'And the argument is that if the tax be laid upon the shares of the stockholders it falls *upon property out of the State*, because nearly all the stockholders, at least a much greater number than the ratio of the mileage of the road in Delaware to its entire length, are citizens and residents of other States; and if the tax be laid upon the shares as representing the property of the corporation it falls upon property out of the State because the ratio of the mileage of the road in Delaware to its entire length is not that which the capital invested by the company in that State bears to the entire capital of the company or that which the value of the property of the company there situated bears to the value of its entire property. If the assumption of the appellant was correct there would be difficulty in sustaining the validity of the tax. The share of a stockholder is in one aspect something different from the capital stock of the company; the latter only is the property of the corporation, the former is the individual interest of the stockholder, constituting his right to a proportional part of the dividends when declared, and to a proportional part of the effects of the corporation when dissolved after payment of its debts. Regarded in that aspect it is an interest or right which accompanies the person of the owner having no locality independent of his domicil. But whether when thus regarded it can be treated as so far severable from the property to which it relates as to be taxable, independent of the locality of the latter, is a question not necessary now to decide.'

"The precise question involved in the present case was not decided in that; but there is a strong intimation that shares of railroad stock can only be taxed in the State where the owner resides.

"The case of Dwight vs. Mayor, &c., of Boston, 12 Allen 316, is a strong case on this point. The Plaintiff, a shareholder in a foreign corporation, claimed a deduction from the tax on his stock on account of

the tax on the property of the corporation in the State where it was situated. The court denied the validity of his claim. The Court says: 'But our whole system of taxation as established and practiced is to disregard the liability of shares in foreign corporations to taxation in the States where they are situated. Thus shares in a foreign railroad corporation held by citizens of this State are fully taxed here and no deduction is made for any taxation to which the corporations are subject in the States where they are situated. So it is in regard to shares held by our citizens in banks, insurance companies, and other monied corporations situated in other States. Such shares when held by our citizens are here treated as so much personal estate, following the person of the owner, and taxable at their full value in this commonwealth regardless of what may be the foreign law as to taxation of the capital or any part of it elsewhere.'

"If the doctrine of these cases is sound and we do not wish to intimate that it is not, we may with even more propriety distinguish between the property of a creditor in a debt, and the property of the debtor.

"The case of Catlin vs. Hull, 21 Vt. 152, a case cited and much relied on by the Plaintiff's counsel, recognizes this distinction, and also the liability of the creditor to be taxed where he resides. A person residing in New York owned personal estate consisting of notes and other obligations of debtors residing in the State of Vermont; these he deposited with the Plaintiff residing in that State as his agent for management, collection and investment, and the Plaintiff being such agent was assessed in that capacity for the estate thus in his hands. The Superior Court sustained the tax, but on page 161 the Court says: "And as this power of taxation in this State is only to be exercised in cases where such property is not shown to be taxed to the real owner where he resides, we think that there is no reason for saying that this power has been exercised in any unjust spirit, or that its exercise shows any want of proper comity in our State government.'

"Of the many cases cited by the Petitioner's counsel only one seems to be directly in point and that is The People vs. Gardner, 51 Barb. 352. In that case however the question was whether the New York Statute which provides for the taxation of real and personal property situated within the State extended to debts due from non-residents. The Court held that it did not. The question was not whether the legislature had power to tax them but whether it had in fact taxed them.

"In that case, Catlin vs. Hull, supra, and Hoyt vs. Commissioners of Taxes, 23rd N. Y. 224, are cited as sustaining the decision. In the last case the Plaintiff residing in New York was assessed in respect to capital invested in business in New Orleans, and in respect to chattels on his farm in New Jersey. The Court held that the assessment was erroneous—that the property assessed was not within the State. But the Court clearly distinguishes between chattels and choses in action. The marginal note says: 'Debts and choses in action in general follow the domicil of the owner.' The language of the Court is: after stating the conclusion to which they have arrived, 'This conclusion is intended to embrace only property which is visible and tangible, so as to be capable

of a *situs* away from the owner or his domicil; and we do not consider the questions in reference to personal estate of a different description. It must be within this State in order to be subject to taxation, for so is the Statute; *but that may be true of choses in action, and obligations for the payment of money due to a creditor resident here,* from a debtor whose domicil is in another State. If the securities are separated from the person and domicil of the owner, and are actually in the hands of an agent in another State for collection, investment and re-investment there, it may be that capital thus situated should be regarded as foreign and not domestic, in the absence of any *special statutory provisions intended for such a case.* Questions of this character need not now be determined.'

"This case therefore is not an authority sustaining the decision in The People vs. Gardner; and that case stands alone, and unsupported. What the decision of the Court of Appeals will be upon this question remains to be seen.

"The conclusion then to which we have come is that it is competent for the legislature of this State to tax our own citizens in respect to money loaned by them to persons residing out of the State.

"We advise the Superior Court to render judgment for the Respondents."

Of course we cannot expect to add to the cogency of the reasoning of the above decision. But we desire to call more particular attention to one or two of the authorities cited by the Plaintiff in Error and to suggest one or two considerations which perhaps were not pertinent until the case was brought to this tribunal.

I.

There can be no question but that the laws of Connecticut require the property in question to be taxed in the town of Woodbury. The Statutes hereinbefore quoted put that matter beyond doubt. The Supreme Court of Errors of Connecticut in its decision of this case speaking of the point, says: "We entertain no doubt, therefore, as to the intention of the Legislature. Indeed, the point is not seriously contested." It is submitted that the decision of said Court upon this point is conclusive.

II.

And it is further submitted, that the only question, if any, decided by the Connecticut Court which can come before this Court for review is, *whether the Legislature of Connecticut has power to tax money invested in bonds secured by deeds of trust of real estate situated in another State.* If that question was correctly decided then the Plaintiff in error has no case here. And we shall not be diverted from the real issue by the many invitations to entirely irrelevant discussions contained in the Plaintiff's assignment of errors, nor by the temptation to discuss the general

policy of taxation which the case might offer to the political economist. Our business is simply with the questions properly raised by the record.

The Connecticut Court as its decision discloses, discussed carefully and philosophically the nature and character of the property, the taxation of which it upheld. Its *situs*, for the purposes of taxation was exhaustively considered. And it is but another form of expressing a claim already made to assert that substantially the only question in this case, as it is presented by the record, is whether said Court erred in holding the situs of the debt due Kirtland to be in Woodbury, for the purposes of taxation, under our Statute.

Our position that the Connecticut Court did not err in its conclusion as to the situs of the property seems to be sustained by the decisions of this Court.

In 15 Wallace R., p. 300, the case of the State tax on foreign held bonds (Railroad Company vs. Pennsylvania) cited by Plaintiff in Error, the Supreme Court of the United States held that "the power of taxation of a State is limited to persons, property and business within her jurisdiction," and came to the logical conclusion from such a proposition that the State of Pennsylvania could not tax bonds issued by a Pennsylvania railroad company in the hands of non-resident holders, though such bonds were secured by a mortgage upon real estate in said State.

That "a mortgage there, though in the form of a conveyance, is a "mere security for a debt and transfers no estate in the mortgaged "premises. It simply creates a lien upon them, and only confers upon "the holder or the party for whose benefit the mortgage is given a right "to proceed against the property mortgaged, upon a given contingency "to enforce the payment of his demand. This right has no locality independent of the "party in whom it resides." On page 319-320, same case the Court says: "Corporations may be taxed like natural persons upon their property and business. But debts owing by corporations like debts owing by individuals are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be, in the nature of things, in debts of corporations belongs to the creditors to whom they are payable and follows their domicile wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement." The same principles are distinctly held in Cooley on Taxation, pp. 15-16, where the last above decision is cited and extracts therefrom quoted. See also page 65 of same work.

Latrobe vs. Baltimore, 19 Md. p. 13.

Hilliard in his work on the Law of Taxation, page 132, says: "Debts and choses in action, being a species of intangible property, are deemed, for purposes of taxation, to be situated at the domicile of the owner. Thus choses in action are properly assessed in the county where the owner resides. So money loaned by one in a certain city and made payable there cannot be taxed to him as personal property, he not being during the year a resident either of the city or of the State."

Burroughs on Taxation, Secs. 41, 134, 432.
Catlin vs. Hall, 21 Vermont R. 152.
Thomas vs. Mason, 4 Bush. 135.
Hoyt vs. Commissioners, 23 N. Y. 224.
23 Cal. 138.
Johnson vs. Oregon, 3 Oreg. 13.
Hall vs. County Commissioners of Middlesex, 10 Allen 102.

Certainly it needs the citation of no further authorities to justify the conclusion of the Connecticut Court that the debt due the Plaintiff in Error was property liable to taxation in the town of Woodbury.

The provision, in the bonds, that principal and interest shall be payable in Chicago in the State of Illinois, and the provision in regard to taxes, in no way affect the conclusiveness of the argument as to the situs of the property in question. See article in the American Law Register, January 1879, pages 1 to 8, citing on this point, page 3, Black vs. Zacharie, 3 Howard 513.

Farmers Bank of Maryland vs. Oglehart, 6 Gill. 56.
Baltimore City Passenger R. R. Co. vs. Sewell, 35 Md. 252-253.

In view of the authorities cited by the Connecticut Supreme Court of Errors, and in this brief, if the reasoning of said Court is not justified then we cannot hope by further citation of authorities to justify it.

In the case at bar, not only was the debt constructively with the creditor according to the reasoning of the cases, but the instruments constituting the evidence of the debt were not separated from the possession of the creditor. The record itself clearly implies that he had them with him in Court, they are a part of the record in the exhibits which take their places in copy as part of the record.

There is no basis for the suggestion that the bonds were not in the possession of the creditor. The tenor of the entire record shows that no such claim was made and, if it is an important fact, we shall claim that

the case as presented to this Court shows that the bonds were in Woodbury when taxed. We insist however that it is not important so far as our claims in this case are concerned, whether the bonds in question were or were not in Woodbury when the lists of property were made out by the Plaintiff in Error, and the addition to his lists was made by the assessors. This much is clear and beyond dispute, viz : that at the times mentioned, the Plaintiff in Error had the respective sums named owing to him as money at interest or credits. The finding shows that the sums of eighteen and twenty thousand dollars respectively were added to his respective lists. Wherever the evidence of indebtedness may have been, he was the creditor and had owing to him said sums, and such sums were properly added to his list as property liable to taxation, and the situs of that property was in Woodbury.

The conclusion that the Connecticut Court of Errors came to, which appears at the end of their decision, viz : "That it is competent for the Legislature of this State to tax our own citizens in respect to money loaned by them to persons residing out of the State," is clearly correct and applicable to this case.

We have yet to find an authority which does not justify the taxation of bonds like these within the jurisdiction where both they and their owner are located. Nor can we find any authority to support the proposition contained in the 14th Assignment of Errors, viz : That the Court erred in deciding "that credits, mortgages, and trust deeds have value for taxation separate from the funds that they represent, thus taxing the evidences of property," which being interpreted is, we suppose, a distinct claim that Connecticut cannot authorize the taxing of a credit where the note, bond or evidence of property is, and where the mortgage security is not, because that is taxing the evidence of property.

The decisions in any State whose law does not require the taxing of bonds, choses in action, etc., *out of the State* can have no force in a State which specifically provides by Statute that bonds, choses in action, etc., in said State *or elsewhere* shall be taxed. We call attention to this point because the Connecticut Statute differs in that particular from the Statutes in some of the States whose decisions are referred to in the brief of Plaintiff in Error.

III.

Prominence is given in the Assignment of Errors to a claim that the decision of the Connecticut Court involves a recognition of the right

of double taxation. No such claim it seems to us can be supported. The decision of the Court raises no such question for review.

I. There is no claim in the Petitioner's bill that he has ever paid taxes on the property in question and to entitle him to relief he must so aver and prove. Savings and Loan Society vs. Austin, 46 Cal. 415.

II. The State of Connecticut has never undertaken to tax this property, this indebtedness, but once, nor has it been taxed elsewhere.

III. In the sense in which the Plaintiff in Error uses the phrase "double taxation" it would not have been unconstitutional to have exacted it. See Cooley on Taxation, pages 158 *et seq.* And especially where he quotes from 36 Me. 255, C. J. Shepley as follows: "Property is liable in many cases to be taxed twice when it would appear difficult or unsafe to make provision by law to prevent. Thus stock in trade may be taxed to the owner, while he may be indebted for it to many persons who may be taxed for those debts or the money loaned to purchase it. Real estate may be taxed to a mortgagor in possession while the mortgagee is taxed for the money secured by the mortgage. * * So imperfect are all human institutions that perfect equality in the imposition of burdens is not to be expected. These provisions for valuation are not considered to be in conflict with the general purpose to have all property subjected to taxation once, and only once at the same time."

In West Chester Gas Co. vs. Chester Co., 30 Penn. St. R. 232, cited with approval in Pittsburgh, &c. R. R. Co. vs. Commonwealth, 66 Penn. St. R. 73, 77-8, it is said, as quoted by Cooley *ib.* p. 161 and 2: "The power to tax twice is as ample as to tax once." And says Cooley, "we make out therefore no conclusive case against a tax when we show that it reaches twice the same property for the same purpose. This may have been intended and in many cases at least is admissible."

The real meaning of that duplicate taxation which is illegal is then given, viz: "The requirement that one person or any one subject of taxation shall directly contribute twice to the same burden while other subjects of taxation belonging to the same class are required to contribute but once."

These considerations would seem to dispose of the claim of duplicate taxation in this case, but we refer in addition to Hilliard on Taxation, pages 4, 111, 132 and 160. The cases from California cited in page 160, are worthy of note and although the decision in Savings and Loan Society vs. Austin, 46 Cal. 415, is inconsistent with the previous decisions in that State, yet we cannot but believe that so far as it is so inconsistent, it is wrong. And we call attention to the comments upon it made by Judge Cooley in the note to page 159 of his work on Taxation.

In the People vs. McCrery, 34 Cal. 432, the action was to recover from the mortgagee a tax levied on the debt secured by the mortgage, and one of the defenses was, that inasmuch as the land covered by the mortgage was also taxed, it presented a case of double taxation. But it was held that if the facts presented a case of double taxation it was only the mortgagor and not the mortgagee whose property had been twice taxed, and that the latter could not complain that the property of the former had been doubly taxed.

People vs. Whortenby, 38 Cal. 461, was a similar case and the same point was again decided.

But in Lick vs. Austin, 43 Cal. 590, it was the mortgagor who complained that his real estate had been taxed at its full value without deducting therefrom the amount of an existing mortgage to which it was subject, which mortgage was a distinct subject of taxation under the Statute. It was claimed that if the land was taxed at its full value, without deducting the mortgage, and if the mortgage debt was also taxed, this would be a double taxation of the same subject matters. But the Court held that it did not concern the mortgagor whether the mortgage debt was taxed in the hands of the mortgagee, and that he could not complain of double taxation unless his *own property* was twice taxed. It was further held that *all* the property of the citizen must be taxed, and that it was not competent for the Legislature to exempt from taxation any particular class or species of property held in private ownership, and that a solvent debt secured by mortgage is property for the purpose of taxation, within the meaning of the constitution.

A fortiori is the doctrine of the above cases, which we say is sound, notwithstanding Savings and Loan Society vs. Austin, applicable to the case at bar, where the debtor and creditor live in different States, and where no offer was made by the creditor Kirtland to show "to the satisfaction of the assessors that the property ought to be taxed was fully assessed and taxed in another State." See Section 24, p. 713, Conn. Statute above quoted.

We claim that the failure to do this puts an end to this case in any event. It cannot be claimed that a State has not a constitutional right to require the owner of property to make his claims for exemption from taxation, and the reasons for such claims to the assessors, and if he fails so to do, to hold him concluded by such failure.

We say then in conclusion that the Supreme Court of Errors of Connecticut, decided correctly that the debt due to Plaintiff in Error was property under the Connecticut Statute. That its situs for purposes of taxation was in Woodbury, Connecticut, and that it was properly taxable in said town.

If there be any other question properly raised by the record we have failed to discover it, and as before suggested we have purposely

avoided the discussion of irrelevant questions, believing that all the points contained in the assignment of errors except those herein discussed however worthy of being presented to our Legislature, have no place in the discussion before this tribunal.

In conclusion we are unable to discover how any question properly arises in this case, which this Court has jurisdiction to decide. It is claimed in the Motion in Error, Record page 20, that in the decision of the case "there was drawn in question the validity of a Statute of, or an authority exercised under said State of Connecticut, on the ground of their being repugnant to the Constitution of the United States." We do not agree with such claim, nor can we see, in view of the decision actually made, how the decision of the Connecticut Court, that the debt was property within our Statute, that its situs for purposes of taxation was in Connecticut, and that it was taxable, can be repugnant to the Constitution of the United States.

As we have seen, no other questions can possibly arise on the record. No question of double taxation is involved, and unless it is repugnant to the Constitution of the United States for Connecticut to hold, that debts, of the character in question, due residents of Connecticut shall be taxable in the Town, in said State, where the creditors reside, then, as we have before said, the Plaintiff in Error has no case. Unless it is repugnant to the Constitution of the United States that debts should be taxed against the person to whom they are due, then, it is submitted, the State of Connecticut has a right, as it is certainly her true policy, to tax her own citizens in respect to such debts.

We should have prefaced our brief with this concluding claim but that its force will appear the more conclusive now that the whole case has been brought before the court by the suggestions which have been made.

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Hervey *vs.* R. I. Locomotive Works, 3 Otto, 664.
Guillander *vs.* Howell, 35 N. Y., 657.

For cases of taxation, where it has been held that visible tangible property could not be taxed when situate beyond the jurisdiction of the taxing State, see—

Hoyt *vs.* Comm. of Taxation, 23 N. Y., 224.
Pacific Steamship Co. *vs.* Com. of Taxes, 46 Howard's Pr., 315.
Foreign held Bond Case, 15 Wallace, 300.

(*c.*) When the colonies were formed in this country, the practice was early generally adopted of taxing in the colonies, only the personal estate situated within their territorial limits.

"All assessments shall be made by the constable and the eight overseers of the parish "proportionable to the estate of the inhabitants "in the town or parish where such assessment is "to be made, and every inhabitant who shall "not contribute proportionally to the rate so "assessed, shall be compelled thereunto by "attachment or distress of goods to be levied "by the constable, *provided that no man shall "be assessed* for any estate, reall or personall, "which lyeth not within the same town or "parish where he is assessed."

Page 318 of "Lawes established by the authority of his Majestie's letters patent granted to his Royall Highness, James, Duke of Yorke and Albany, published March the 1st, Anno Domini 1664, at a General meeting at Hemsted, upon Longe Island, by virtue of a Commission from His Royall Highness, James, Duke of Yorke and Albany."

In Massachussetts, it was early established that "no man shall be rated for any estate or revenue

he hath in England, or in any foreign parts, till it be transported thither."

(*d*) The doctrine "*mobilia personam sequuntur*" has no general application with respect to choses in action, negotiable or non-negotiable, and cannot be invoked to dispose of this cause without examination into the reasons that should assign a situs to the subject of the taxing power.

1. Negotiable choses in action must be now regarded as possessing the incidents of property and as capable of a situs of their own.

Foreign held Bond Case, 15 Wallace, 300.

British Com. Life Ins. Co. *vs.* Com. of Taxes, 31 N. Y., 32, 28; How. Pr., 41.

State of Missouri *vs.* St. Louis Co. Com., 47 Missouri, 594.

People *vs.* Home Ins. Co., 29 California, 533.

Attorney-General *vs.* Bouvens, 4 Meeson & Welsby, 172.

2. In many instances and for many purposes it has been held that non-negotiable choses in action do not follow the person of the owner.

I. In case of the death of the owner, choses in action do not follow the person of the owner sufficiently to have a situs at his former domicil.

Beers *vs.* Shannon, 73 New York, 292.

In this case, it was held that a bond conditioned to discharge incumbrances of record, or pay a certain sum of money, owned by a resident of Pennsylvania, made by an

obligor who resided out of New York, and by a surety who resided in Monroe County, New York, was assets in Yates County, New York, where it actually was at the time of the obligee's death.

"It is urged, however, that though an asset, it was not an asset anywhere but in the county where the obligors resided at the time of issuing the letters. Kohler *vs.* Knapp, 1 Bradf., 241, is cited, in which it is said (at page 247): 'The rule is that debts constitute assets where the debtor resides.' If it be conceded that a debt upon simple contract follows the debtor, and has its situs where he has his abode, it is not so with a debt upon a bond, it being a specialty.' The debt is where the bond is, being upon a specialty, his debt upon contract follows the person of the debtor; and this difference has been often agreed.' Per Anderson, *Ch. J.*, Byron *vs.* Byron, Cro. Eliz., 472; and so says Swinburne on Wills, p. 439 (folio) part 6, § XI. 'And these debts are said to be *bona notabilia ;* where the bonds or other specialties are, and not where the debtors inhabit. But in case the debts are only by contract, without specialty, they are then to be esteemed *bona notabilia* in the place where the debtor is.' And so it is of judgments, locality is given them by the situs of the Court where they are entered and not of the abode of the debtor.

(Gold *vs.* Strade, Carthen, 148.
Yeomans *vs.* Bradshaw, *Id.*, 373.)"

Noonan *vs.* Bradley, 9 Wallace, 405.

In this last case, it was held that a bond secured by mortgage made in Wisconsin, and payable to a resident of New York, was on his death "*bona notabilia*" in Wisconsin.

A debt due to a foreigner from a person domiciled in France, is regarded as assets in France, to be administered in accordance with the French Statute of Distributions.

Journal du Palais, Court of Cassation, August 27, 1850 (1851, page 205).

Choutun *vs.* Choutun.

II. Choses in action can be confiscated, and the sovereignty exercising the right of confiscation has jurisdiction of the debt, if it has jurisdiction only of the debtor, even if it has no jurisdiction of the creditor or of the evidence of the debt.

The debt is regarded as having a situs at the domicil of the debtor.

11 Wallace, 296, Miller *vs.* U. S.:

The owner of railroad stock can be dispossessed of his property by constitutional and legal confiscation, by legal process served on the officers of the railroad company controlling the issue and transfer of the stock, although the share certificates of the the stock remained transferred and in possession of the owner resident in a rebel state. "In admiralty practice, rights in action, things intangible, as stocks and credits, are attached by notice to the debtor or holder, without the aid of any statute."

15 Wallace, 501, Brown *vs.* Kennedy:

The rights of an owner in a bond and mortgage can be confiscated by the United States where the mortgage debtor resides, though in point of fact the bond and mortgage were never in the district of the United States (the State of Kansas) where the proceedings in forfeiture took place, but were with the owner in the rebel lines in the State of Virginia.

The capture of a person does not give the conqueror the right to the credits of the prisoner.

Philimore on International Law, § 567, vol. 3, p. 688.

III. In the case of a foreign bankrupt, an attaching creditor can collect from the bankrupt's debtor, at the domicil of the latter, a debt due the bankrupt, and hold it against assignees by operation of law or the other creditors.

Ogden *vs.* Saunders, 12 Wheaton, 358.

Harrison *vs.* Stemy, 5 Cranch, 289.

IV. Nearly every country now permits attachment of a debt at the residence of a debtor, and collection made in such proceedings is a perfect bar to a second recovery by the original creditor. Such proceedings depend for their validity upon the theory that the *situs* of the debt is at the domicil of the debtor.

England permits attachment proceedings against a non-resident who has money invested in any government or public stock or shares in companies.

4 & 5 William IV., construed in Cooking *vs.* Anderson, 1 De Rex, Jones & Smith, 365.

V. There is abundant authority for refusing to assign to a chose in action a *situs* at the domicil of the creditor for the purposes of taxation.

In England, foreign holders of consols pay income tax.

Income tax was collected by the United States from foreign holders of coupons, payable in this country, during the recent existence of this form of taxation.

In Austria and Italy, an income tax is imposed on foreign holders of government debts.

Probate duty is not payable in England with respect to French rentes.

Attorney-Gen'l *vs.* Dimond, 1 Crompton & Jervis, 356.

Probate duty is not payable in England with respect to registered United States stock.

Attorney-Gen'l *vs.* Hope, 8 Bligh's New Rep., 44.

In France a succession duty is exacted on shares in incorporated companies and on all debts owned by non-residents, and obligations due in France to non-resident foreigners. They are treated as incorporeal values following the person of the debtor, subject to the law of the place where they are payable. Hence the Revenue Department of the French government imposes no tax or succession duty on debts due French creditors payable in other countries.

Buchèse Opérations de la Bourse, Paris, 1877, § 248 and § 861.

Tappan *vs.* Merchants' Nat. Bank, 19 Wallace, 500.

"His money" (*i. e.*, money of non-resident owner of bank shares) "invested in the shares is withdrawn from taxation under the authority of the State in which he resides, and submitted to the taxing power of the State where, in contemplation of the law, his investment is located."

Peo. *ex rel.* Trowbridge *vs.* Commissioners.

Peo. *ex rel.* Pacific Mail St. Co.; decided in N. Y. Court of Appeals in

June and July, 1875, on authority of opinion in first-named case, at General Term, reported in 4 Hun. 595.

(B) As this Court has never decided the questions presented in this case, it is assumed that they will be considered on their merits and on principle. It therefore becomes necessary to examine:

(1) *What is the subject of taxation by the State of Connecticut in imposing the taxes complained of*, and (2) *what situs or habitat shall be assigned to that subject ?*

These questions can be considered together.

This Court, by a happy generalization, has decided that the subjects of taxation are "persons, property and business."

Foreign held Bond Case, 15 Wallace, 300.

I. Does the tax in question fall upon a person ?

It by no means follows that the tax falls upon the person who first pays it. It is necessary to look beyond the payor to determine where the burden ultimately falls, and the constitutionality of a tax is decided by the propriety of imposing a burden on the subject that ultimately bears the load.

St. Louis *vs.* Ferry Co., 11 Wallace, 423.
Ward *vs.* Maryland, 12 Wallace, 426, 428.

"It has repeatedly been held that the constitutionality or unconstitutionality of a State tax is to be determined not by the form or agency through which it is to be collected, but by the subject upon which the burden is laid."

State Freight Tax, 15 Wallace, 232, 272.

A tax upon a "person" is a poll tax. The essen-

tial requisite of a poll tax is that it be laid on all "polls," and be unvarying in amount. Neither of these requisites is possessed by the tax under consideration, and no person would seriously contend that this tax could be regarded as a poll tax.

Indeed, it has been stipulated in this case that the only question is the validity of the taxation of the bonds of the plaintiff in error (folio 14 of Record).

It may be claimed that this is a tax upon the person *with reference to his property*. Some of the cases use language that would indicate an opinion that it is possible to treat such a tax, possibly, as a *varying poll tax*, and not as a tax upon property.

A varying poll tax, it is suggested, would be an arbitrary exaction, and would not be sustained for a moment as a proper exercise of the right of taxation, if laid without reference to a man's ownership of property. So soon, however, as the amount of the tax exacted is made dependent upon the amount of property owned, we have not a varying poll tax, but a tax upon the property itself.

This principle was clearly decided in the Bank Tax Cases, when it was held that a tax upon the capital of a bank, depending upon a valuation of its property in which that capital was invested, was a tax upon that property.

Bank of Commerce *vs.* N. Y. City, 2 Black., 620.

Bank Tax Case, 2 Wallace, 200.

The interposition of the person in whose possession any property may be, in the process of raising a tax, is in the stage of its assessment. The person is *assessed*, not *taxed*, with reference to any particular property. It is the *property* that is taxed. Real estate, that is often not in the open and notorious possession of any one, is quite as conveniently assessed to unknown owners or to no owners at all, as to any particular person. Personal property, if worth taxing, is always in the possesion of

some one; but the tax on it could be raised without difficulty, if the assessment were to no person, provided the tax collector were sure of finding this personal property at hand, and where it could be levied upon when the tax came to be paid. Assessing a person with respect to personal property makes him the tax collector of the State, so far as that particular piece of property is concerned; but it is not necessary to the legality or validity of the exercise of the taxing power, and does not change the burden of taxation from the property to the person. The taxes complained of do not therefor fall upon a "person."

II. Is this tax on property?

(*a*) The statute of Connecticut speaks of money at interest as the subject of the taxing power. But it is clear that the money lent by Kirtland cannot be taxed. If it were money *not* lent, in the form of gold or silver coin, or United States or national bank notes, or if it were any other visible tangible property in Chicago, it would not be subject to taxation by the State of Connecticut. Surely, the circumstance that the plaintiff in error has parted with the money to his debtor, does not oblige him to pay a tax on that which could not be taxed while in his hands. This money is not the property of Kirtland; it has become the property of Cummings, the mortgage debtor.

"It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable."

Nelson, *J.*, Railroad Co. *vs.* Jackson, 7 Wallace, 263.

As Judge Carpenter, of the Supreme Court of Errors, in this case, says: "The specific money when loaned and received by the borrower, is no longer the property of the cred-

itor. It is soon merged in the circulating mass, and the creditor can neither identify nor claim it, nor put his hand upon any property purchased with it and say that 'that is his.'"

42 Conn., page 438.

(*b*) Kirtland has received for his money certain paper writings called bonds, secured by deeds of trust on Cummings' land in Chicago. These paper writings, the case shows, never have been in Connecticut, and always have been in Illinois (folio 11 of Record).

The tax, therefore, cannot be upheld, if it be laid upon the bonds themselves of Kirtland, as property subject to taxation by Connecticut.

Hoyt *vs.* Commissioners, 23 N. Y., 224.

Foreign held Bond Case, 15 Wallace, 300.

(*c*) It is said these bonds are only the evidence of the debt due from Cummings to Kirtland. Judge Carpenter says: "The note, bond, or account even, may be evidence of a debt—it is not the debt itself." Is it the debt that is taxed by the State of Connecticut?

This Court has recognized the distinction between a debt or credit and its evidence.

Pelham *vs.* Rose, 9 Wall., 103.

Pelham *vs.* Way, 15 Wall., 196.

No salvage is allowed on the recovery of bills of exchange or other property from wrecks.

The Emblem, Davies' Reported Cases, 61.

A debt or credit, however, has no value apart from the property of the debtor that must respond to it. We speak of debts and credits as property, but such use of language is purely figurative. The creation of

a credit always produces a corresponding debit, which, deducted from the credit, leaves, as a result, no increase of property. A credit, therefore, never is a positive or economic quantity. It simply establishes the relation of the creditor to the debtor's property, or the inchoate contingent interest or lien of the creditor on the debtor's property. Property is, strictly speaking, only visible, tangible substances, in whole or in part the result of labor.

"Debts are not property."

Murray *vs.* Charleston, VI. Otto, 432.

A debt or credit is called property, because connected with the right of its enforcement against the debtor, it becomes the representative of his property. Such right is also valuable, and, being transferable, partakes of the nature of the right of ownership in actual property. The value of a debt and of its right of enforcement cannot be separated from the value of the property that is to pay it. For all practical purposes, the debt has no existence, if the property of the debtor has no existence. If there be no property of the debtor to respond to this right, the debt or credit ceases to be valuable. The bonds of Kirtland are valueless, unless they can be collected out of property of Cummings, his debtor. Kirtland's interest in these bonds is but his interest in Cummings' property; and although that interest is inchoate, capable of being shut off and destroyed, as to all of Cummings' property (except the real estate specifically pledged), by his insolvency, it is the only element that gives any value to the bonds. The property of Cummings is taxed in Illinois, where it is situated and where it is protected.

A charge upon his obligations, if it be lawful, is the taxation of his property.

"It is property in possession or enjoyment, and not merely in right, that must ultimately pay every tax.

"In any case a credit has no value other than the value it has acquired by reason of the probability that the property, having present actual value, upon which a tax is levied and collected, will be applied to the satisfaction of the claim it represents."

People *vs.* Hibernian Bank, 51 Cal., 243.

If Connecticut has the right to tax these bonds, that right existed when the bonds were made, and affected the contracts themselves. The borrowing power of Cummings was affected by the existence of that right.

Weston *vs.* City of Charleston, 2 Peters, 449.

A burden upon Cummings' property is therefore laid by the taxation of these debts.

People *vs.* Hibernian Bank, *supra*.

Chief-Justice Waite, in speaking of the exemption from taxation of mortgages and similar instruments, in the borough of Carlisle, Pennsylvania, says:

"This is a partial exemption only. It was evidently intended to prevent a double burden by the taxation both of property and debts secured upon it."

Hepburn *vs.* School Directors, 23 Wallace, 480.

So far as actual property is concerned, Cummings' property that is to pay these bonds, is all the property that there is in existence to bear the burden of Connecticut's taxes. That property is situated in Illinois, out of the jurisdiction of Connecticut.

(*d*) These bonds of the plaintiff in error are evidences of certain rights to collect money, principal and interest, out of the debtor's property. They prove the existence of a different kind of right in the real estate securing them than a deed of the same real estate. They evidence a different kind of right in the debtor's personal property than a chattel mortgage or bill of sale of that property. Nevertheless, all the evidences of title named are but the records and evidences of rights in property.

It may be suggested that the action of a State in taxing an evidence of debt at the the time the debt is created, or in any manner by which the law imposing the tax enters into and forms a part of the contract, in the absence of any clause in its Constitution prescribing equality or uniformity of taxation, where it has jurisdiction both of the creditor and of debtor's property, may be beyond challenge; but such a state of facts would present a question totally different from that here considered. In such case the debtor's property would indeed be taxed by taxing in the creditor's hands the representative of that property. But a case of double taxation would then be presented, not one of extra-territorial taxation.

People *vs.* Hibernian Bank, 51 Cal., 243.

Does Connecticut claim that Kirtland's rights in his debtor's property should be assigned a situs within her borders?

It is clear that mere rights can have no situs in any literal sense. Only figuratively can they be said to occupy a locality.

A debt is a conclusion of law arising from certain facts, and expresses the relation of creditor and debtor.

If we speak of taxing a debt or a contract,

we mean really, taxing the creditor's rights growing out of this conclusion and relation.

In assigning a figurative situs to the creditors' rights in his debtors' property for the purpose of taxation, it is obvious that we must be governed by considerations arising out of the principles of taxation. A situs is oftentimes assigned to a contract, but the terms of the contract themselves determine, frequently, what that figurative situs shall be. The fact of the domicil of the parties does not conclusively determine what shall be considered as the situs of a contract, when the questions of its validity, construction and performance are under discussion. The place where it was made, the place where it is to be performed, are taken as its situs accordingly as the question under discussion requires. The inquiry really is, in such cases, what situs shall be assigned to the particular right secured by the contract that is sought to be enforced? So, in discussing the situs that shall belong to a contract, or to the rights thereby secured to the creditor, for the purpose of taxation, the terms of that contract and its nature, the place of its inception, and the place of its performance are to be considered. Taxation is the correlative of protection. What jurisdiction protects the rights acquired by the plaintiff in error in the bonds in question? The answer to that inquiry will determine the situs to be assigned, for the purpose of taxation, to the rights that are evidenced by these bonds.

It is said that the State of Connecticut protects Kirtland's rights in his bonds, because it has jurisdiction of his person, and in protect his person protects all his personal rights. One judge has said that the *jus disponendi* is protected by the State of the owner of a

debt or credit, because the transfer of the debt is governed by the laws of that owner's domicil, and that such State has, therefore, a right to tax such debt or credit.

City of Baltimore *vs.* Bonaparte.

But it is only by comity and by force of the laws of the State where the debtor resides or his property is, out of which it is sought to make the debt, that the exercise of the *jus disponendi* of the owner is permitted in accordance with the laws of his domicil.

See *supra*. A. (*a.*) Point I.

Hence the State of the locality of the debtor's property out of which the debt is to be made, not that of the creditor's domicil, protects the *jus disponendi*.

In the case at bar the bonds were made in Illinois and payable in Illinois. The maker resided in Illinois, the real estate pledged was in Illinois, *the pledge could only be enforced in Illinois*, and the rights of the plaintiff in error were wholly protected by the laws of Illinois. He could make no transfer of these bonds by force of the laws of his domicil, as effect would be given to these latter laws in Illinois, only by the force of Illinois law, and not by their intrinsic power.

These bonds were only collectable in Illinois apart from the foreclosure of the deed of trust, because there the debtor resided, and presumably had his property. It may be said that the plaintiff in error had the right to sue Cummings if he came into the State of Connecticut, and that this right was protected by Connecticut. This is true, undoubtedly, but can it be claimed that the protection of this right, the only right protected by Connecticut, gives that State a right to tax these bonds? Each State in the Union gives to the

plaintiff in error the same right, and protects him in it. He has the power of bringing suit against the defendant in error in any State in which he may serve process upon him, or in which he may find property of Cummings to attach; but every State in the Union does not claim the right to tax these bonds.

There is no more reasonableness in assigning to the State of the creditor's domicil, the situs of a debt or credit due from an inhabitant of another State, than in assigning to the State of the owner's domicil the situs of a piece of real estate or visible, tangible property situate in another State, and in possession of an inhabitant of such other State. In each case, whether the thing owned be debt, real estate or visible personal property, the right of disposal inheres in the owner, no matter where he may be. The debt can be assigned only by him. The foreign real estate needs his signature to a deed to be transferred. The personal property can be followed by him, and taken out of the possession of one who acquires it without his action. The State of his domicil protects his rights in one species of property as much and no more than in another. In the case of each species of property, the rights of the owner are really protected by the State in which is situated the property that is to respond to the exercise of his rights, whatever may be their nature.

The reasoning of the Court below, after speaking of the possible loss by the debtor fo the money loaned, is as follows: "It is all the same to the creditor, so long as his debtor's ability to pay is unimpaired. He has simply a right to receive a given sum of money with interest or damages for its detention. It is a personal right and accompanies the person of the creditor. The debtor is under a

corresponding obligation to pay this demand. *The right to receive is valuable*, and through it an income is derived. *That right may, with propriety, be taxed.*

42 Conn., 438.

The record shows that the tax in question is not an income tax, and further, that the income from these bonds was received in Illinois. There is no proof that this income was ever brought into Connecticut. This "right to receive," therefore, was wholly exercised in Illinois.

The fallacy of this reasoning is that it assumes that rights can properly be taxed for the sole reason that they are valuable. The *value* of a right is not the test of its taxable quiality. The right to receive rent from foreign real estate, the right of ownership of visible, tangible personal property situated out of the State, are valuable, but not necessarily or in fact taxable at the domicil of the owner. A deed containing a covenant of warranty, is a contract for the payment of money. If there be a breach of the contract the grantee's right of action is valuable, provided the grantor is solvent. It does not follow that this right is taxable at the place of residence of the grantee. The true test to determine where the power resides to tax a valuable right, is, *What sovereignty protects this valuable right?* This question the learned Court below does not touch.

Protection is the correlative of taxation. Protection governs the situs of a right and fixes it. The court below assumes the situs of this particular right, and then imagines protection of it by the State of Connecticut.

19 Wallace, 490, Tappan *vs.* Merchants' Nat. Bank:

"The power of taxation by any State is

limited to persons, property or business within its jurisdiction. Personal property, in the absence of any law to the contrary, follows the person of the owner, and has its situs at his domicil. But for the purpose of taxation it may be separated from him, and he may be taxed on its account at the place where it is actually located."

"A share of bank stock may be in itself intangible, but it represents that which is tangible. It represents money or property invested in the capital stock of the bank. That capital is employed in business by the bank, and the business is very likely carried on at a place other than the residence of some of the shareholders. The shareholder is protected in his person by the government at the place where he resides; but his property in this stock is protected at the place where the bank transacts his business."

21 Vermont. 122. Catlin *vs.* Hull:

A person residing in New York owned personal estate, consisting of notes and other obligations of debtors, residents of Vermont. These evidences of debt were in the hands of an agent residing in Vermont, who was assessed with reference to them. It was claimed that this personal property followed the owner out of the State and was not taxable in Vermont. Held that it was taxable in Vermont. Referring to the maxim that personal property follows the owner, the Court said:

"But this rule is merely a legal fiction, adopted from considerations of general convenience and policy for the benefit of commerce, and to enable persons to dispose of property at their decease agreeably to their wishes, without their being embarrassed by their want of knowledge in relation to the laws of the country where the same is situated. But this

doctrine in relation to the situs of personal chattels, and their transfer and distribution, we do not consider as at all conflicting with the actual jurisdiction of the State where it is situate over it, or with the right to subject it, in common with the other property of the State, to share in the burden of government by taxation."

19 Kansas 414, Fisher *vs.* Com. of Bush Co.:

"Persons residing in this State (Kansas) are not subject to taxation and assessment in respect to business or interests beyond the territory and jurisdiction of the State, and which the laws of the State cannot in any way reach or protect."

The law of the State of Kansas in this case imposed a tax on debts due to the residents of the State from citizens of other States.

Fisher, the plaintiff, owned notes secured by mortgage on land in Iowa. The notes were payable in Iowa, and were kept in the hands of a banker there for collection. The case seems on all-fours with the one at bar. The Court said:

"Taxation and protection are correlative terms. Protection to that portion of the property not taken or absorbed by the tax, is the compensation or consideration for all legislative taxation. Without this protection, or some benefit to be returned therefor, taxation would be but another form of spoiliation or confiscation. To sustain the decision of the District Court would be to ignore the fundamental principle upon which taxation is based, and authorize the taxation and assessment of persons in respect to *business or interests beyond the territory and jurisdiction of Kansas*, and which the laws of the State could in no way reach or protect."

33 Georgia, 113, Bridges *vs.* Mayor, &c., of Griffin:

"By the charter, the Mayor and City Counsel can only levy and collect a tax upon that property which is within the city. It is true that debts due by note, account or otherwise, are property within the sense of that charter and of the general statutes of the State, but unless the persons who owe the debts reside in Griffin, they are not properly within the city. The fact that the owner of these debts resides in the city and has the notes there does not alter the fact. The notes are but the evidences of the debt, while the debt itself is out of the city, as a man's title deeds or bill of sale are the evidence of the owners right of property in his land and negroes, and it never would be thought that land and negroes out of the city would be liable to the city taxes because the owner resided in the city and kept his title deeds there."

51 Barb., 352, People *vs.* Gardiner:

A resident of New York cannot be assessed in that State for moneys invested in bond and mortgage in Wisconsin and Illinois, the securities being held by agents in those States. Neither the moneys loaned, nor the securities, are property within New York State.

"The validity of the agreements under which the loans were made, the protection of the securities taken for their payment, and the remedies provided for enforcing the securities depended alike upon such laws," *i. e.*, the laws of the States in which the loans were made.

People *ex rel.* Bank of North America *vs.* Com. of Taxes, 1 S. C. R., 630.

Varner *vs.* Calhoun, 48 Ala., 178:

"Gold and United States treasury-notes *on deposit* in New York, and stocks of foreign

corporations owned by citizens of this State, are not subject to taxation by the State under any provisions of the revenue law of 1868." This revenue law of 1868, defining the subjects of taxation, as quoted in the case, thus reads: "All money *hoarded* or kept on deposit, subject to order, either in or out of the State; all investments in the stock of any company or corporation out of the State." The Court, in giving its opinion, said: "There is a recognized division of laws into personal and real (physical actualities) statutes. The former pertain to the person, and are of general obligation everywhere; the latter have for their object *property*, and have no extra-territorial force or obligation. Under this latter denomination is included our State revenue laws. No State would permit the collection of taxes, by suit or otherwise, for the support of a foreign government. Capital, no less than population, is a welcome immigrant. If the States or countries whence it comes can pursue it for purposes of taxation, the consequent confusion would be inextricable and disastrous. The mere evidence of its ownership, whether a certificate of deposit or of stock, or other title, though held in this State, is *not the property*, nor can it change its location. Story's Con. of Laws, secs. 12, 13, 18, 29; Bank of Augusta *vs.* Earle, 13 Pet."

See cases cited, *supra*. A (*d.*) V.

If the taxes complained of fall on property, they burden either, (see supra,)

(*a.*) The money lent by Kirtland.

(*b.*) The bonds themselves (the paper writings.)

(*c.*) The property of Cummings.

(*d.*) The debts owned by the plaintiff in error, *i. e.*, his rights in the property of his debtor, Cummings.

Each and every one of these possible subjects of the taxes complained of, must be assigned a situs beyond the territorial limits of Connecticut.

III. A contract in writing for the payment of money (such a contract as the bonds of the plaintiff in error in this case), is—

1. The record of acts already done, and of acts agreed to be performed in the future.
2. The evidence that certain rights with respect to property have been transferred by these acts already done, and that certain rights of a similar character exist with respect to the acts to be performed.

"A contract does not create a right, but only transfers rights. A contract implies in each party a right to do that to which the contract relates, and to pass over to another what is one's own. If I have no right to use my labor according to my will, or have no property in a thing, I cannot transfer the product of my labor, or what I have in my hands, to another. It is thus the exercise in a special case, for the benefit of another, of a right already existing. I cannot make that the property of another, by contract, which is not mine already. Were it otherwise, were contracts a source of new power, they would be stronger than God."

Woolsey's Political Science, vol. 1, p. 75.

The contract itself has no actual situs apart from that of the paper itself.

The acts performed have a situs where they have been performed.

The acts to be performed will have a situs where they shall have been performed.

The rights secured by the contract have a figurative situs where they are protected.

The visible tangible property that is to respond to the debt, has its situs where it occupies a portion of space.

We have previously considered the possible situs of each element of the contracts before the Court, except the acts of business evidenced by them (*supra*, pages 29-43).

If the taxes complained of cannot be sustained as taxes on "property," to which a situs can be assigned within the State of Connecticut, can the *acts of "business"* performed by the parties to the bonds of the plaintiff in error, already performed and in the future to be performed, in the State of Illinois, be assigned such a situs?

The whole question resolves itself into this:

Are acts of business performed out of the territorial jurisdiction of the State of Connecticut, by any theory to be regarded as within that State for purposes of taxation?

One of her citizens leaves her borders, does an act in the State of Illinois, and on his return is asked to pay a tax by reason of that act. His return to the State does not bring within the State the business he has already performed out of it.

Protection is the correlative of taxation.

Unless Connecticut in some manner protects the acts of business performed and to be performed in Illinois by the parties to the bonds before the Court, she must abandon her claim to tax the plaintiff in error by reason of those acts of business.

What is the protection that a State gives to its citizens in performing an act of business without its borders? Absolutely none whatever. In using the word "protection," naturally the mind dwells first upon the kind of protection furnished by the police power, and the instrumentalities of the State for securing order and enforcing rights. It is obvious that no such protection is given by Connecticut to the plaintiff in error in transacting his business in Illinois.

A distinction may here be drawn between the powers of the General Government and that of the States as to extra-territorial taxation.

A citizen owes his general allegiance to the national, and only a territorial allegiance to his State. The State can only protect "persons, property and business" within its territory, and, therefore, the citizen of the State owes no allegiance to the State with reference to any transaction beyond its borders. Allegiance and protection are correlative and conterminous or commensurate. When the protection is territorial, as is the case with reference to State protection, the allegiance and the right of taxation are also territorial. When the protection is general or everywhere, the allegiance and the right of taxation are general.

"If we measure the power of taxation residing in a State by the extent of the sovereignty which the people of a single State possess and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied." Chief-Justice Marshall, in McCullough *vs.* State of Maryland.

Connecticut has no army, navy or courts that she can employ in other States to protect the property, rights or persons of her citizens in those States. The allegiance, therefore, of her citizens is territorial, and the extent of her power of taxation is measured by the extent or boundaries of her power of protection.

The "protection" that is correlative to taxation is, however, something more than the protection of the material power of the State. There is a kind of protection given by a State that prevents one individual from being forced to pay more taxes on his business than another who transacts the same business. It is a principle of taxation, that there shall be a *uniformity of burden among direct competitors.*

Illinois having exclusive jurisdiction over the business of lending money within her State, lays what burden of taxation she pleases on the business. Her laws enter into the contract and become part of them. She has the power to guarantee equality of

burden among direct competitors in this business of lending money and to give protection to that business, and no other State has the physical power to intrude within her borders and there tax that business. A State cannot establish an equal burden on the business of loaning money within her territory, by non-residents, if the State where the lender resides may also tax that business. Another and a hostile power, in that case, interferes with the power of a State to tax uniformly business carried on within her borders. Connecticut cannot protect this business or her citizens in it. The competitors of Kirtland in this business in Illinois are citizens of Pennsylvania, California, Montreal, England and elsewhere. In none of these places specially enumerated is money loaned on bond and mortgage taxed. In England, a man pays an income tax on the profits of moneys loaned abroad only, when he brings the income within the United Kingdom. Kirtland has not been taxed with reference to his interest moneys brought into the State of Connecticut. The tax attacked by the plaintiff in error does not pretend to be an income tax. There is nothing in the case to show that he ever brought the interest money that he received in Illinois, where it was payable, into Connecticut. It does appear that he reinvested the principal in Illinois (folio 13). He has been taxed by Connecticut upon his acts of loaning money in Illinois. If Illinois alone can tax this business, Kirtland is protected against his direct competitors, and an equality of burden on them all is assured to him; if Connecticut can tax this business, as she has no jurisdiction over Kirtland's competitors, he is not so protected.

If a charge upon the business of loaning money be, in fact, a tax and not an arbitrary exaction, it is charged over to the borrower and paid by him. One cardinal principle of taxation is that there shall be diffusion of the burden, and that it shall ultimately fall upon the consumer of property. If there be uniformity of burden among direct competitors, there will be

diffusion. If there be no such uniformity of burden, there can be no diffusion.

"Taxes form an important part of the cost of all productions, distribution and consumption, and represent the labor performed in guarding and protecting property at the expense of the State, in all the processes of development and transformation, and will always be diffused and disseminated equitably and uniformly by the same means and natural laws as are other expenses of production. We produce to consume, and consume to produce, and the cost of consumption, including taxes, enters into the cost of production, and the cost of production, including taxes, enters into the cost of consumption, and thus taxes uniformly levied upon things of the same class, by the laws of competition, supply and demand, and the the all-pervading mediums of labor, will be distributed, percussed and repercussed to a remote degree, until they finally fall upon every person, not in proportion to his consumption of a given article, but in proportion to his aggregate consumption."

Remarks of Isaac Sherman, Esq., before Committee of Ways and Means of N. Y. Legislature, October, 1874. Pamphlet, page 6.

If this so-called tax of Connecticut were a tax and not an arbitrary exaction, it would enter into these contracts, form part of them and be a burden on the borrower. The effect would be that suggested in the foreign-held bond case, as following a proper statutory provision for taxing a loan passed before the loan was made.

"The tax in that case would be in the nature of a license tax for negotiating the loan, for, in whatever manner made payable, it would ultimately fall upon the company as a condition of effecting the loan, and the parties contracting with the company would provide for it by proper stipulations."

15 Wallace, 322.

If the right exists in Connecticut to tax these bonds, that right, if recognized when these contracts were made, increased the rate of interest reserved by the plaintiff in error. If such were the fact, it is the borrower who really is called on to pay the taxes. He has to compete with his neighbors who have borrowed from residents of States that do not tax their residents on foreign loans. He cannot, therefore, add this tax to the cost of his corn, or of whatever he sells, be it labor, manufactures or products of the soil, for he has to compete with those who are more lightly burdened than himself. To be diffused, taxes should be added to, and form part of the cost of production. If they cannot be so added, the first payor is mulcted by so much, in addition to the burdens of his direct competitors. There is no evidence that the parties to these bonds fixed the rate of interest with any reference to the possible action of the State of Connecticut in attempting to tax the bonds. This last suggestion is made to show, that the existence of the right to tax the bonds by Connecticut is impossible, because its effect must be to introduce an inequality of burden among direct competitors in the business of borrowing money by residents of Illinois from non-residents of that State, as well as in the business of loaning money by residents of Connecticut to residents of Illinois.

Any so-called exercise of the taxing power, that lays upon the business of one individual a greater burden than his competitor in that business has to bear, is not *taxation*, it is *arbitrary exaction*.

"A tax upon the person or property of A, B and C, individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons or property of the class of persons or kind of property subject to the taxation, is to the extent of such excess the taking of private property for public use

without compensation. The process is one of confiscation and not of taxation."

1872. State *vs.* Township Committee of Reading, 36 N. J., 66.

See also Cooley on Constitutional Limitations, 493, 515.

The individual who pays a tax in the first instance only advances it and charges it over to some one else. If Kirtland has to pay a charge, a so-called tax, that does not enter into the contract that he has made, he cannot diffuse it. No charge can be diffused that is not uniformly laid upon all direct competitors, and when such a charge is met with, it must be pronounced no tax, but an arbitrary exaction, by reason of its inability to be diffused. It is evident that no uniformity of burden among direct competitors can be arrived at, unless all the competing property or business is within the jurisdiction of the taxing power.

The "business," therefore, of the plaintiff in error, with respect to the bonds in question, has been and is to be actually performed in Illinois, is not protected by Connecticut, either by her material power or against direct competitors, and for the purposes of taxation by that State, must be held to have a situs beyond her jurisdiction.

Point III.

THE STATUTE OF CONNECTICUT, HERE COMPLAINED OF, IS REPUGNANT TO THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES, FOR THE REASON THAT IN DIRECTING THE TAXATION OF A SUBJECT THAT IS BEYOND ITS JURISDICTION, IT VIOLATES AND INTERFERES WITH THE SOVEREIGNTY OF THE STATE OF ILLINOIS.

It is assumed that the previous discussion has led to the conclusion, that the taxation of the bonds of

the plaintiff in error, falls upon either property or acts of business to which a situs without the borders of the State of Connecticut must be assigned.

This statute is now to be considered in the same light as if by its terms it imposed taxation upon real estate or visible tangible property situate in the State of Illinois. Had Connecticut directed such taxation, would it have been repugnant to the provisions of the Constitution of the United States?

1. The jurisdiction of a State over property and business within its borders is complete.

Mager *vs.* Guina, 8 How., 490.

No State ever enforces the revenue laws of another sovereignty.

Story's Conflict of Laws, section 257.

The decisions of this Court have been unvarying in determining that the laws of no sovereignty have any extra-territorial effect.

"The laws of no nation ever justly extend beyond its own territory, except so far as it regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its jurisdiction. And however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction to places and persons upon whom the Legislature has authority and jurisdiction.

The Appolon, 9 Wheaton, 370.
See also Ogden *vs.* Sanders, 12 Wheaton, 213.

Hervey *vs.* Long Island Locomotive Works, 3 Otto, 664.
Pennoyer *vs.* Neff, 95 U. S., 722.

See also

Guillander *vs.* Howell, 35 N. Y., 657.
Reynolds *agst.* Geary, 26 Conn.

In the case of Lamb *vs.* Bowser, 7 Bissell, 315, a citi-

zen of Indiana gave a note for a premium of insurance, to an agent in Indiana of an Illinois Insurance Company. The agent mailed the note with a proposal for insurance to Illinois. The insurance company made the policy, and mailed it to the applicant in Indiana from its office in Illinois. The citizen of Indiana having been sued upon the note, claimed that the note was void by force of a statute of Indiana, under whose provisions it was alleged that the contract of insurance was void, because the agent of the company had not complied with the requisites of the statute. Judge Gresham said: "It is not competent for the Legislature of Indiana to declare that the citizens of this State shall not be allowed to make such contracts as they pleased out of the State for the insurance of their property, whether it be within or without the State." Judge Drummond said: "It cannot be pretended, I think, that the Statute of Indiana can declare, that one of its citizens cannot go to Cincinnati and buy a cargo of corn to bring into the State."

7 Bissell, p. 372.

It has recently been claimed, that contracts of life insurance made out of the State of Massachusetts were subject to the provisions of an act known as the "Non-forfeiture Act," passed by the State of Massachusetts, if such policies were issued on the lives of the citizens of that State and delivered therein.

This question was considered in the case of Desmazes against The Mutual Benefit Life Insurance Company (7 Insurance Law Journal, page 927).

Judge Clifford said: "Unless the contract was a Massachusetts contract, it is clear that those statutes could not have any controlling influence in the case, it being settled that the laws of a State cannot have any extra-territorial operation in that regard," citing—

Baldwin *vs.* Hale, 1 Wall., 223.
Green *vs.* Collins, 3 Clifford, 494.

D'Arcy *vs.* Ketchum, 11 How., 73.
Pennoyer *vs.* Neff, 5 Otto, 720.
See also Whitcomb *et al. vs.* Phœnix Ins. Co., Vol. 8, Ins. Law Journal, p. 624.

2. Such a pretended exercise of the taxing power by the State of Connecticut, would be repugnant to the limitations upon the powers of the States, imposed by the spirit of the Constitution of the United States. It is not necessary, in order to restrain the exercise of the acts of sovereignty on the part of any State to its own territorial limits, to discover some verbal provision of the Constitution of the United States that meets the point directly. If it can be gathered from an examination of the theory upon which the instrument is framed, that the different States are intended to sustain such relations to each other, that no State shall have the right to exercise an act of sovereignty beyond its own borders and within the limits of another State, this Court will determine that the powers of the separate States are limited in accordance with the contention of the plaintiff in error, in the absence of any direct provision that meets the case.

"*Implied* prohibitions restricting the power of the States to lay and collect taxes also exist, which are as effectual to that end as those which are *express*."

Ward *vs.* Maryland, 12 Wallace, 427.

This Court has not hesitated to declare, that the attempt on the part of the several States to tax the operations of banks chartered by the General Government, and to tax bonds issued by the General Government, are violations of the limitations imposed upon the several States by the United States Constitution, although no express provision can be found within the four corners of the instrument limiting the power of the States in these regards.

In the case of *McCullough* agst. *The State of Maryland*, 4 Wheaton, 316, this Court says: "There is no express provision for the case, but the claim has been sustained on the principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture as to be incapable of being separated from it without rending it into shreds. This great principle is that the Constitution and the laws made in pursuance thereof are supreme; that they control the Constitution and laws of the respective States and cannot be controlled by them."

See also Crandall *vs.* The State of Nevada, 6 Wallace, 35.
Passenger Tax Cases, 7 Howard, 283.

In this last-mentioned case it is said, in the dissenting opinion of Ch. Justice, that, so far as it affects American citizens, "a tax imposed by a State for entering its territories or harbors, is inconsistent with the rights which belong to citizens of other States as members of the Union, and with the objects which that Union was intended to attain. Such a power in the States could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

In the case of Weston against City of Charleston (2 Peters, 462), it was held that in the absence of any express provision of the Constitution of the United States, a State was prohibited from taxing stock of the United States, because such stock is an instrumentality of the General Government. This decision was based upon the broad ground that the stock issued by the Government, is the evidence of a debt created by the exercise of the power given to Congress by the Constitution to borrow money on the credit of the United States, and that a tax upon such stock is a tax upon the contract subsisting between the Government and the individual. The Court says: "The right to tax the con-

7 day of April, 1873, levied sundry tax-warrants upon the following described real estate, lying in said town near the middle quarter school-house on the east side of the highway, containing fifteen acres, more or less, with the buildings thereon standing, bounded north and east by land of the estate of David Summers, deceased; south and west by highway, of which land the petitioner is the owner, and now threatens to sell the same to pay the pretended taxes on said illegally added sums as aforesaid, in said lists for the years 1869 and 1870, and thereby throw a cloud upon the petitioner's title to said land, and deprive the petitioner of the same. And your petitioner avers that said respective sums so illegally added as aforesaid to said lists for the years 1869 and 1870 are not liable for any tax levied in and by said town of Woodbury.

Whereupon he prays your honor to take his case into consideration and inquire into the truth of the foregoing allegations, and, on finding them true, to order and decree that said Hotchkiss and his successors in the office of collector of said taxes shall be enjoined and restrained from the levy of said tax-warrants and the collection of said taxes from the said real estate or other property of the petitioner, or grant such other relief as to wisdom and justice may appertain.

And as in duty bound your petitioner will ever pray.

Dated at Woodbury, this 27th day of May, 1873.

CHA'S W. KIRTLAND.

8 To the sheriff of the county of Litchfield, his deputy, or either of the constables of the town of Woodbury, except L. L. Hotchkiss, in said county, greeting:

By authority of the State of Connecticut, you are hereby commanded to summon said Leonard L. Hotchkiss, of said Woodbury, to appear before the superior court to be held at Litchfield, within and for the county of Litchfield, on the 3rd Tuesday of September, A. D. 1873, then and there to show cause, if any he have, why the prayer of said petition should not be granted.

Hereof fail not, but of this petition due service and return make according to law.

Dated at Woodbury the 27th day of May, 1873.

WILLIAM COTHREN,
Justice of the Peace.

LITCHFIELD COUNTY, *ss:*

WOODBURY, *May 27th*, 1873.

Personally appeared Charles W. Kirtland, signer of the above petition, and made solemn oath to the truth of the same according to his best knowledge and belief.

Before me.

WILLIAM COTHREN,
Justice of the Peace.

9 STATE OF CONNECTICUT,
New Haven County, ss:

NEW HAVEN, *May 27th*, 1873.

Upon the foregoing petition, verified by the oath of the petitioner, and upon motion of his attorney, William Cothren, it is hereby ordered that you, the said Leonard L. Hotchkiss, do henceforth absolutely desist and refrain from the further levy, or from any further proceeding to collect said taxes, under and by virtue of said warrants, or either of them, and from placing by means thereof any cloud upon, or in any manner selling or disposing of the said real estate described in said petition, or other

property of the petitioner, under a penalty of one thousand dollars in case of a violation of this order, until the next term of this court, to be held at Litchfield, within and for the county of Litchfield, on the 3d Tuesday of September, 1873, and until the court shall make further order in the premises. And that notice of this order shall be given to said Hotchkiss by some proper officer leaving with him forthwith a true and attested copy of said foregoing petition, citation, and order of injunction.

EDWARD J. SANFORD,
A Judge of the Superior Court of Connecticut.

10 *Officer's return.*

LITCHFIELD COUNTY, *ss:*

WOODBURY, *4th day of May*, 1873.

Then I left a true and attested copy of the within petition, citation, and order of injunction in the hands of Leonard L. Hotchkiss, as herein commanded.

Attest:

CHA'S M. GOODSELL,
Deputy Sheriff.

Fees: Travel to serve, $2.00; service, 12; 1 copy, 3.50; 2 endorsements, 25—$5.87.

CHARLES W. KIRTLAND
vs.
LEONARD L. HOTCHKISS.

The respondent denies the truth of the matters alleged in the foregoing petition, and puts himself on the court for trial.

RESPONDENT, by himself.

And the petitioner doth the like by his attorney.

W. COTHREN.

11 *Finding of facts and reservation.*

Superior court for Litchfield County, April term, 1875.

CHARLES W. KIRTLAND
vs.
LEONARD L. HOTCHKISS.

Upon the trial of the above-entitled cause it was proved and admitted that the petitioner is a resident of the town of Woodbury, and that on the 30th day of October, 1869, he made and returned to the assessor of said town, in conformity to law, a correct list of all the real and personal property owned by him on the 1st day of October in that year, liable to taxation, situated or invested in this State, amounting to $6,941.00, duly verified by his oath.

That on the 15th day of January, 1870, after due notice to the petitioner, the board of relief of said town added to his said list the sum of $18,000.00, making his whole list, as made out by said board for the purposes of taxation, the sum of $24,941.00.

That the said sum of $18,000.00, added to the petitioner's list as aforesaid by said board of relief, was invested in bonds in the city of Chicago,

State of Illinois, secured on real estate located in said city by deeds of trust, one of which bonds, given for the sum of $3,000.00, together with the deed of trust securing the payment of said sum, are hereunto annexed, marked Exhibits "A" and "B," and made part of this
12 finding. The remainder of said $18,000.00 was invested in bonds of the same date, and in the identical words of said bond marked "A," secured by deeds of trust in the identical words of Exhibit B, except as to amounts and names of grantors.

That all the stipulations and agreements in said bonds and deeds of trust contained were duly kept and performed, and the said sum of $18,000.00 was duly paid at the maturity of said bonds, on the 17th day of July, 1874, and again reinvested in said Chicago.

It was proved and admitted that the petitioner in like manner, on the 31st day of October, 1870, made and returned to the assessor of said town, in conformity to law, a correct list of all the real and personal estate owned by him on the 1st day of October in that year, liable to taxation, situated or invested in this State, amounting to $4,941.00, duly verified by his oath.

That on the 16th day of January, 1871, after due notice to the petitioner, the board of relief of said town added to his said list the sum of $20,000.00, making his whole list, as made out by said board for the purposes of taxation, the sum of $24,941.00. The twenty thousand dollars so added consisted of the same bonds above mentioned, with two thousand dollars additional, in the same kind of bonds, secured by like deeds of trust.

That the said board of relief added said sum of $18,000.00 to said list of 1869, and said sum of $20,000.00 to his said list of 1870,
13 against the will and protest of the petitioner, and that the amount of tax laid on the list of 1869 was ten mills on the dollar, and eight mills on the dollar on the list of 1870.

That the petitioner, on the 11th day of April, 1870, paid to the collector of taxes for said town of Woodbury all taxes due on his said list of 1869, except the tax laid upon said $18,000.00 added by the board of relief, and that, on the 10th day of April, 1871, in like manner he paid to said collector all taxes due on his said list of 1870, except the tax laid upon said $20,000.00 added by the board of relief to that list.

That the tax on said $18,000.00, so refused to be paid by the petitioner, amounted to $180, and the tax on said $20,000.00, refused in like manner, amounted to $160. That the respondent, on the 1st day of April, 1873, by virtue of tax warrants duly directed to him as collector of said town of Woodbury, on said lists of 1869 and 1870, made demand of the petitioner for the above-mentioned sum, which he refused to pay, claiming said taxes to be illegal.

That the respondent thereafter, on the 2d day of April, 1873, levied his said warrants on the real estate of the petitioner described in his petition, and advertised the sale thereof in a public newspaper, pursuant to law, said sale to take place at the sign-post in said Woodbury on the 7th day of June, 1873, for the purposes of paying said taxes, interest, and costs.

14 That to prevent said sale and the casting of a cloud upon the title to his said land, he prayed out and caused to be served his said injunction in this suit.

The parties agree that the only question in the case is whether said bonds owned by the petitioner, drawn in the form and secured in the manner and form as above stated, were or were not liable to taxation under the statute in such case made and provided. If they were so

property of the petitioner, under a penalty of one thousand dollars in case of a violation of this order, until the next term of this court, to be held at Litchfield, within and for the county of Litchfield, on the 3d Tuesday of September, 1873, and until the court shall make further order in the premises. And that notice of this order shall be given to said Hotchkiss by some proper officer leaving with him forthwith a true and attested copy of said foregoing petition, citation, and order of injunction.

EDWARD J. SANFORD,
A Judge of the Superior Court of Connecticut.

10 *Officer's return.*

LITCHFIELD COUNTY, *ss:*

WOODBURY, *4th day of May*, 1873.

Then I left a true and attested copy of the within petition, citation, and order of injunction in the hands of Leonard L. Hotchkiss, as herein commanded.

Attest:

CHA'S M. GOODSELL,
Deputy Sheriff.

Fees: Travel to serve, $2.00; service, 12; 1 copy, 3.50; 2 endorsements, 25—$5.87.

CHARLES W. KIRTLAND
vs.
LEONARD L. HOTCHKISS.

The respondent denies the truth of the matters alleged in the foregoing petition, and puts himself on the court for trial.

RESPONDENT, by himself.

And the petitioner doth the like by his attorney.

W. COTHREN.

11 *Finding of facts and reservation.*

Superior court for Litchfield County, April term, 1875.

CHARLES W. KIRTLAND
vs.
LEONARD L. HOTCHKISS.

Upon the trial of the above entitled cause it was proved and admitted that the petitioner is a resident of the town of Woodbury, and that on the 30th day of October, 1869, he made and returned to the assessor of said town, in conformity to law, a correct list of all the real and personal property owned by him on the 1st day of October in that year, liable to taxation, situated or invested in this State, amounting to $6,941.00, duly verified by his oath.

That on the 15th day of January, 1870, after due notice to the petitioner, the board of relief of said town added to his said list the sum of $18,000.00, making his whole list, as made out by said board for the purposes of taxation, the sum of $24,941.00.

That the said sum of $18,000.00, added to the petitioner's list as aforesaid by said board of relief, was invested in bonds in the city of Chicago,

State of Illinois, secured on real estate located in said city by deeds of trust, one of which bonds, given for the sum of $3,000.00, together with the deed of trust securing the payment of said sum, are hereunto annexed, marked Exhibits "A" and "B," and made part of this
12 finding. The remainder of said $18,000.00 was invested in bonds of the same date, and in the identical words of said bond marked "A," secured by deeds of trust in the identical words of Exhibit B, except as to amounts and names of grantors.

That all the stipulations and agreements in said bonds and deeds of trust contained were duly kept and performed, and the said sum of $18,000.00 was duly paid at the maturity of said bonds, on the 17th day of July, 1874, and again reinvested in said Chicago.

It was proved and admitted that the petitioner in like manner, on the 31st day of October, 1870, made and returned to the assessor of said town, in conformity to law, a correct list of all the real and personal estate owned by him on the 1st day of October in that year, liable to taxation, situated or invested in this State, amounting to $4,941.00, duly verified by his oath.

That on the 16th day of January, 1871, after due notice to the petitioner, the board of relief of said town added to his said list the sum of $20,000.00, making his whole list, as made out by said board for the purposes of taxation, the sum of $24,941.00. The twenty thousand dollars so added consisted of the same bonds above mentioned, with two thousand dollars additional, in the same kind of bonds, secured by like deeds of trust.

That the said board of relief added said sum of $18,000.00 to said list of 1869, and said sum of $20,000.00 to his said list of 1870,
13 against the will and protest of the petitioner, and that the amount of tax laid on the list of 1869 was ten mills on the dollar, and eight mills on the dollar on the list of 1870.

That the petitioner, on the 11th day of April, 1870, paid to the collector of taxes for said town of Woodbury all taxes due on his said list of 1869, except the tax laid upon said $18,000.00 added by the board of relief, and that, on the 10th day of April, 1871, in like manner he paid to said collector all taxes due on his said list of 1870, except the tax laid upon said $20,000.00 added by the board of relief to that list.

That the tax on said $18,000.00, so refused to be paid by the petitioner, amounted to $180, and the tax on said $20,000.00, refused in like manner, amounted to $160. That the respondent, on the 1st day of April, 1873, by virtue of tax warrants duly directed to him as collector of said town of Woodbury, on said lists of 1869 and 1870, made demand of the petitioner for the above-mentioned sum, which he refused to pay, claiming said taxes to be illegal.

That the respondent thereafter, on the 2d day of April, 1873, levied his said warrants on the real estate of the petitioner described in his petition, and advertised the sale thereof in a public newspaper, pursuant to law, said sale to take place at the sign-post in said Woodbury on the 7th day of June, 1873, for the purposes of paying said taxes, interest, and costs.

14 That to prevent said sale and the casting of a cloud upon the title to his said land, he prayed out and caused to be served his said injunction in this suit.

The parties agree that the only question in the case is whether said bonds owned by the petitioner, drawn in the form and secured in the manner and form as above stated, were or were not liable to taxation under the statute in such case made and provided. If they were so

liable, then the injunction to be dismissed; if not, then the injunction to be made perpetual.

On the foregoing facts and by request and agreement of the parties this case is reserved for the advice of the next supreme court of errors, to be held at Litchfield, within and for the county of Litchfield, on the 2d Tuesday of June, 1875.

By the court.

LOOMIS, *J.*

15 *Document marked "A."*

Know all men by these presents that Edmund A. Cummings, of the city of Chicago, county of Cook, and State of Illinois, am held and firmly bound unto Charles W. Kirtland, of the town of Woodbury, county of Litchfield, and State of Connecticut, in the penal sum of six thousand dollars, lawful money of the United States of America, to be paid unto the said Charles W. Kirtland, his executors, administrators, or assigns, for which payment well and truly to be made I do bind myself, my heirs, executors, and administrators firmly by these presents, sealed with my seal, and dated Chicago, in the State of Illinois, this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

The condition of this obligation is such that if the above-bounden Edmund A. Cummings, his heirs, executors, or administrators, shall and do well and duly pay or cause to be paid unto the said Charles W. Kirtland, his executors, administrators, or assigns, the sum of three thousand dollars, on the seventeenth day of July, which will be in the year of our Lord one thousand eight hundred and seventy-four, with interest for the same, to be computed from the day of the date
16 hereof, at and after the rate of ten per centum per annum, which interest shall be paid half yearly, to wit, on the seventeenth day of each of the months of January and July, which will be in each and every year, until the said principal sum shall be fully paid, and the said payments, both of principal and interest, shall be made at such place in the city of Chicago, in the State of Illinois, as the said Charles W. Kirtland, his executors, administrators, or assigns, may from time to time in writing appoint, and in default of such appointment, then at the Manufacturers' National Bank, in said city of Chicago, then and in such case this bond to be void; otherwise, to remain in full force and virtue.

Provided nevertheless, and it is hereby expressly agreed and fully understood, that if default be made in the payment of any of the interest on the principal sum above mentioned, payable half-yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to the above condition, then and in that case the principal sum above-mentioned, together with all arrearges of interest thereon, shall at the option of the said Charles W. Kirtland, his executors, administrators or assigns, thereupon become due and payable, and may be demanded and collected immediately thereafter, anything hereinbefore contained to the contrary notwithstanding.

17 It is hereby expressly declared that this bond or obligation is made under and is in all respects to be construed by the laws of the State of Illinois, and is given for an actual loan of money, made at the said city of Chicago, by the said Charles W. Kirtland to the said Edmund A. Cummings, on the day of the date hereof.

EDMUND A. CUMMINGS. [SEAL.]

Whereas Edmund A. Cummings, of the city of Chicago, in the county of Cook, and State of Illinois, is justly indebted unto Charles W. Kirtland, of the town of Woodbury, in the county of Litchfield, State of Connecticut, in the sum of three thousand dollars, an actual loan of money made to him at Chicago and secured to be paid by his bond bearing even date herewith, in the penal sum of six thousand dollars, but conditioned in effect for the payment of the sum of three thousand dollars, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-four, with interest for the same at the rate of ten per centum per annum, payable half-yearly, both principal and interest payable at such place in the city of Chicago, in the State of Illinois, as the said Charles W. Kirtland, his executors, administrators or assigns may from time to time in writing appoint, and in default of such appointment, then at the Manufacturers' National Bank in said
18 city of Chicago, with a proviso thereunder written that if default be made in the payment of the interest payable half-yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to said condition, then and in that case the principal sum aforesaid, with all arrearages of interest thereon shall, at the option of the said Charles W. Kirtland, his executors, administrators or assigns thereupon become due and payable, and may be demanded and collected immediately thereafter, anything thereinbefore expressed to the contrary notwithstanding.

Now, therefore, know all men by these presents that I, the said Edmund A. Cummings, for the purpose of securing the prompt and punctual payment of the said principal sum of money, and of the interest thereon, according to the true intent and meaning of the said bond, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Norman C. Perkins, or any other attorney of any court of record in the United States of America, to be my true and lawful attorney, irrevocable, for me and in my name, place and stead, to appear in any court of record, in term time or vacation, in any of the States, Territories, or districts of the United States, at any time after default shall have been made in the payment of the said principal sum, or of either of said half-yearly installments of interest, or any
19 part thereof, according to the true intent and meaning of said condition of said bond, and the proviso thereto, to waive service of process, accept a declaration and confess a judment in favor of the said Charles W. Kirtland, his executors, administrators or assigns, upon said bond, for so much of principal and interest as shall at the time of the entry of such judgment be and remain unpaid upon said bond, due or not due, according to the true intent and meaning of the condition of said bond and the proviso thereto, together with all costs, charges, and a reasonable sum in addition thereto as an attorney's fee; and for such purpose to file a cognovit for such amounts, with an agreement therein that execution may issue forthwith, and that no writ of appeal shall be prosecuted upon such judgment, nor any bill in equity filed or any other proceeding had to interfere in any manner with the operation of such judgment, nor any motion made to quash, set aside, or stay any execution that may be issued thereon.

And, further, the said attorney is hereby empowered at his option, in case of default being made or suffered in the payment of any of the interest coupons when due and payable, to waive service of process and confess a judgment in favor of said Charles W. Kirtland, his executors, administrators or assigns, upon such of the coupons given with said

bond, for the payment of the interest thereon, as shall at such time be due by the terms thereof, and then remaining unpaid, for so much money as may then be due thereon according to the tenor thereof, together with all costs and charges, and a reasonable sum in addition for each of such coupons, as an attorney's fee, hereby ratifying and confirming all that my said attorney may legally do under and by virtue hereof.

Witness my hand and seal at Chicago aforesaid, this seventeenth day of July, A. D. 1869.

EDMUND A. CUMMINGS. [SEAL.]

Due Charles W. Kirtland, or order, one hundred and fifty dollars, on the seventeenth day of July, A. D. 1874, without grace, payable at such place in the city of Chicago, in the State of Illinois, as he, his executors, administrators or assigns may in writing appoint, and in default of such appointment, then at the Manufacturers' National Bank in said city of Chicago, being for the payment of the half-yearly interest due that day on my bond to said Charles W. Kirtland of this date conditioned for the payment of three thousand dollars on the seventeenth day of July, A. D. 1874.

Chicago, July 17th, 1869.

EDMUND A. CUMMINGS.

21 Due Charles W. Kirtland, or order, one hundred and fifty dollars on the seventeenth day of January, A. D. 1874, without grace, payable at such place in the city of Chicago, in the State of Illinois, as he, his executors, administrators, or assigns may in writing appoint, and in default of such appointment, then at the Manufacturers' National Bank in said city of Chicago, being for the payment of the half-yearly interest due that day on my bond to said Charles W. Kirtland, of this date, conditioned for the payment of three thousand dollars on the seventeenth day of July, A. D. 1874.

Chicago, July 17th, 1869.

EDMUND A. CUMMINGS.

Due Charles W. Kirtland, or order, one hundred and fifty dollars on the seventeenth day of July, A. D. 1873, without grace, payable at such place in the city of Chicago, in the State of Illinois, as he, his executors, administrators, or assigns, may in writing appoint, and in default of such appointment, then at the Manufacturers' National Bank in said city of Chicago, being for the payment of the half-yearly interest due that day on my bond to said Charles W. Kirtland, of this date, conditioned for the payment of three thousand dollars on the seventeenth day of July, A. D. 1874.

Chicago, July 17th, 1869.

EDMUND A. CUMMINGS.

22 Due Charles W. Kirtland or order, one hundred and fifty dollars, on the seventeenth day of January, A. D. 1873, without grace, payable at such place in the city of Chicago, in the State of Illinois, as he, his executors, administrators, or assigns, may in writing appoint, and in default of such appointment, then at the Manufacturers National Bank, in said city of Chicago, being for the payment of the half-yearly interest due that day on my bond to said Charles W. Kirtland, of this date, conditioned for the payment of three thousand dollars on the seventeenth day of July, A. D. 1874.

Chicago, July 17th, 1869.

EDMUND A. CUMMINGS.

Document marked "B."

This indenture made this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-nine, between Edmund A. Cummings and Ellen M. Cummings, his wife, in the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Norman C. Perkins, of the said city of Chicago and State of Illinois, trustee, party of the second part.

Whereas the said Edmund A. Cummings is justly indebted unto
23 Charles W. Kirtland, of the town of Woodbury, in the county of Litchfield, State of Connecticut, in the sum of three thousand dollars, secured to be paid by the certain bond of the said Edmund A. Cummings, bearing even date herewith, in the penal sum of six thousand dollars, conditioned for the payment unto the said Charles W. Kirtland, his executors, administrators, or assigns, of the sum of three thousand dollars on the seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-four, with interest thereon from the day of the date of the said bond, at the rate of ten per centum per annum, to be paid half-yearly, to wit: on the seventeenth day of each of the months of January and July, in each and every year until the said principal sum shall be fully paid, which payments, both of principal and interest, are to be made at such place in the city of Chicago, in the State of Illinois, as the said Charles W. Kirtland, his executors, administrators, or assigns, may from time to time in writing appoint, and in default of such appointment, then at the Manufacturers' National Bank in said city of Chicago, under which bond there is a proviso written, whereby it is agreed that if default be made in the payment of any of the interest on the said principal sum payable half-yearly as aforesaid, and any por-
24 tion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to the condition of the said bond as aforesaid, then and in that case the principal sum above mentioned, with all arrearages of interest thereon, shall at the option of the said Charles W. Kirtland, his executors, administrators, or assigns, at once become due and payable, and may be demanded and collected immediately thereafter, anything thereinbefore contained to the contrary notwithstanding.

Now, therefore, this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said principal sum of money, with interest thereon, according to the true intent and meaning of the said bond, and also in consideration of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, his successors in trust and assigns, forever, all the certain lot, piece, or parcel of land situate, lying and being in the city of Chicago, county of Cook and State of Illinois, and known and described as follows, to wit:

Lot eighty-five (85) of the subdivision of block sixty-one (61) of the Canal trustee subdivision of section seven (7), township thirty-nine
25 (39) north, range fourteen (14) east of the third principal meridian; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in

law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances.

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part his successors in trust and assigns, forever.

In trust, nevertheless, that if default shall be made in the payment of the said principal sum of money, or the interest that may accrue thereon or any part thereof, when the same become due and payable, either by election of the legal holder of the said bond under the provisions of the said bond, or of this instrument, or by the maturity of the said bond, or if the said Edmund A. Cummings, his heirs, executors, or administrators, shall at any time until said principal sum and all arrearages of interest thereon shall be fully paid, suffer said premises or any part thereof to be sold for any tax or assessment whatsoever,
26 or shall do or permit to be done to, in, upon, or about said premises anything that may in anywise tend to diminish the value thereof, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or shall neglect to keep all buildings upon said premises insured, and the policies of insurance delivered to said party of the second part or his successors in trust, as hereinafter provided, or shall fail in anywise to fully keep and perform all and singular the covenants and agreements hereinafter contained, that then and from thenceforth it shall be lawful for the said party of the second part, or his successors in trust, on application of the legal holder of said bond, with or without a previous entry upon said premises, to sell and dispose of the premises hereby granted, or intended so to be, and all right, title, benefit, and equity of redemption of the said party of the first part, their heirs or assigns, therein, at public auction, at the north door of the court-house, in the said city of Chicago, to the highest bidder for cash, having first given twenty days' notice of the time and place of such sale, by advertisement in any one of the daily newspapers that may then be published in the said city of Chicago, in the English language, personal notice of such sale to said party of the first part, their heirs, executors, administrators, or assigns, or any and all persons claiming by, through, or under them, being hereby
27 expressly waived and excused, and in the name or names of the said party of the second part, or his successors in trust, to make, execute, and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of conveyance for the premises sold, in the law, for the same, in fee-simple, and out of the money arising from such sale to pay and retain—

First. All charges and expenses made or sustained on account of this trust, including the expenses of such advertisement, sale, and conveyance, commissions on such sale, and all moneys that the said party of the second part or his successors in trust may have advanced for insurance, taxes, and redemption from tax sales on the said premises, or to protect his or their title thereto in any manner whatever, with interest on such advances at ten per centum per annum.

Second. All of said principal sum of money and accrued interest thereon that may at the time of such sale remain unpaid, whether due or not due.

Third. Rendering the overplus, if any there be, unto the said Edmund A. Cummings, his executors, administrators, or assigns, upon reasonable request.

And the said party of the second part or his successors in trust may adjourn such sale from time to time, and for such time as he or

they may judge best, and may also at such sale sell the said
28 premises entire, without division, or in parcels, in his or their discretion. And it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the purchase-money. Which sale so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all persons claiming or to claim the said premises or any part thereof, by, from, through, or under them or any of them. And the said party of the first part agree to surrender possession of the said premises to the purchaser or purchasers at such sale, peaceably, on demand.

And if the said party of the second part, or his successors in trust, shall at any time advance money for insurance on the said premises, or to pay taxes thereon, or to redeem from tax-sales of the same, or to protect his or their title thereto in any manner whatever, such advances shall be a charge upon the said premises, and may be collected, with interest thereon, in the manner hereinbefore provided.

And the said party of the first part for the consideration above mentioned, and in order to create a first lien and incumbrance on said premises under this deed, for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue thereof, do hereby expressly waive and release all
29 right and benefit which they have in and to said premises, or to which they may be entitled in said premises or the proceeds of sale thereof, under and by virtue of an act entitled "An act to exempt homesteads from sale on execution," passed by the general assembly of the State of Illinois and approved February 11th, A. D. 1851, and also an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by said assembly and approved February 17th, A. D. 1857, as well as any and all other acts of a like character, or for a similar purpose.

And the said Edmund A. Cummings for himself, his heirs, executors and administrators, does covenant, grant, bargain and agree to and with the said party of the second part, his successors in trust and assigns, that at the time of the ensealing and delivering of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee-simple; and has good right, full power, and lawful authority to grant, bargain, sell and convey the same, in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part,
30 his heirs and assigns, against all and every other person and persons lawfully claiming or to claim the whole or any part thereof, the said Edmund A. Cummings will warrant and forever defend. And that until the said principal sum of money and all arrearages of interest thereon shall be fully paid, will pay or cause to be paid, all taxes and assessments on the said premises, when the same become due and payable; and that he will not do or permit to be done to, in, upon or about the said premises, anything that may in anywise tend to diminish the value thereof, or to weaken or impair the security intended to be effected under and by virtue of this instrument. And that he will keep all buildings upon the said premises insured in such good and reliable insurance company or companies as the said party of the second part or his successors in trust may select, for the insurable value thereof; the policy or policies of such insurance to be either in the name or names

of the said party of the second part or his successors in trust, or to be so drawn that the loss, if any, shall be payable to him or them, and to be held by him or them as additional security hereto; but such insurance shall not at any time be required for a greater sum than the amount of the said indebtedness then remaining unpaid.

A reconveyance of said premises to be made to said Edmund A. Cummings, his heirs or assigns, at his or their expense, on full
31 payment of the indebtedness aforesaid, and performance of the covenants and agreements made herein by the said party of the first part.

And in case of the death, absence, inability, or refusal to act of said party of the second part, then Thomas Lord, of the said city of Chicago, shall be, and he hereby is, appointed and made successor in trust to said party of the second part, under this deed, with like powers and authority, and said premises shall thereupon become vested in said successor in trust, for the uses and purposes aforesaid.

In witness whereof the said party of the first part have hereunto set their hands and seals at the said city of Chicago the day and year first above written.

EDMUND A. CUMMINGS. [SEAL.]
ELLEN M. CUMMINGS. [SEAL.]

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, James H. Moore, a notary public in and for the city of Chicago, county and State aforesaid, do hereby certify that Edmund A. Cummings and Ellen M. Cummings, personally known to me as the real persons whose names are subscribed to the foregoing instrument of writing as having executed the same, appeared before me this day in
32 person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, and thereby conveyed all their right, title, and interest in and to the premises described in said instrument, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called.

And the said Ellen M. Cummings, wife of the said Edmund A. Cummings, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument and her right under the homestead-laws of the State of Illinois having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower, and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notariel seal this fourth day of August, A. D. 1869.

Dated July 17, 1869.

JAMES H. MOORE,
Notary Public.

To secure bond of $3,000.

33 Filed for record in the recorder's office of Cook Co., Illinois, on the 10th day of Aug., A. D. 1869, and duly recorded in book 547 of deeds, page 203.

NORMAN T. GASSETTE, *Clerk.*

Decree.

CHARLES W. KIRTLAND }
vs.
LEONARD L. HOTCHKISS. }

LITCHFIELD COUNTY, *ss:*

Superior court, September term, A. D. 1875.

Be it remembered that Charles W. Kirtland, of the town of Woodbury, in said county, preferred his petition to this court at its September term, 1873, sitting as a court of chancery, against Leonard L. Hotchkiss, of said town, therein in substance averring—

That he resides in and is a settled inhabitant of said town of Woodbury; that in the year 1869 he made and returned to the assessors of said town of Woodbury, in conformity to law, a correct list of all the real and personal property belonging to him, situated within this State, for the purposes of taxation.

34 That afterwards, on the 15th of January, 1870, the board of relief of said town added to the petitioner's list of taxable property, so made and returned by him to the assessor, as aforesaid, the sum of eighteen thousand dollars, and the said sum was included in his said list of taxable estate, and the several State, town, and school taxes, for said town of Woodbury, were pretended to be assessed by said town and its lawful officers upon the whole of said consolidated list, including said added sum of eighteen thousand dollars.

This said list of his taxable estate, so made and returned by him to said assessors, as aforesaid, contained all his real and personal estate liable to taxation in this State, and that he verified his said list by his oath before the proper officer; that the said list, according to the best of his knowledge, remembrance, or belief, was a true statement of all his property liable to taxation, and that he had not conveyed or temporarily disposed of any estate for the purpose of evading the provisions of the act relating to taxation.

That said board of relief added said sum of eighteen thousand dollars to his said list without authority of law, against his mind and will, contrary to the principles of equity, and in a manner unjust, arbitrary, and oppressive to your petitioner, the said sum being falsely and unlawfully added to the total amount of all his taxable property within this State.

That in the year 1870 he made and returned to the assessors of
35 said town of Woodbury, in conformity to law, a correct list of all the real and personal property belonging to him, situated within this State, for the purposes of taxation.

That afterwards, on the 16th day of January, 1871, the board of relief of said town of Woodbury added to the petitioner's list of taxable property, so made and returned by him to the assessors as aforesaid, the sum of twenty thousand dollars, and the said sum was included in his said list of taxable estate, and the several State, town, and school taxes for said town of Woodbury were pretended to be assessed by said town and its lawful officers upon the whole of said consolidated list, including said illegally-added sum of twenty thousand dollars.

That said list of his taxable estate, so made and returned by him to said assessors as aforesaid, contained all his personal and real estate liable to taxation within this State, and that he verified his said list by his oath before the proper officer; that the said list, according to the

best of his knowledge, remembrance, or belief, was a true statement of all his property liable to taxation, and that he had not conveyed or temporarily disposed of any estate for the purpose of evading the provisions of the act relating to taxation.

That said board of relief added said sum of twenty thousand dollars to his said list without authority of law, against his mind and will,
36 contrary to the principles of equity, and in a manner unjust, arbitrary, and oppressive to your petitioner, the said sum being falsely and unlawfully added to the total amount of all his taxable property within this State.

That on the 11th day of April, 1870, he paid to the collector of taxes for said town of Woodbury the whole amount due to him as such collector upon the entire amount of said list for taxes for the year 1869, made out by the petitioner, and returned by said assessor as aforesaid to the town clerk's office, but did not pay to him any tax laid upon said illegally-added sum of eighteen thousand dollars.

That on the 10th day of April, 1871, he paid to the collector of taxes for said town of Woodbury the whole amount due to him as such collector, upon the entire amount of said list, for the year 1870, as made out by the petitioner and returned by the assessors to the town clerk's office as aforesaid, but did not pay to him any tax laid upon said illegally-added sum of twenty thousand dollars.

That Leonard L. Hotchkiss, of said Woodbury, as collector of taxes for said town, and as collector of the taxes pretended to be laid by said town on said illegally-added sums in said lists, for the years 1869 and 1870, on the 1st day of April, 1873, demanded the sum of four hundred and forty-five dollars as the amount due from said petitioner to pay the pretended taxes upon said illegally-added sums in the lists for
37 the years 1869 and 1870, which the petitioner refused to pay. And the said Hotchkiss thereafter, on the 2d day of April, 1873, levied sundry tax warrants upon the following-described real estate lying in said town near the middle quarter school-house, on the east side of the highway, containing fifteen acres more or less, with the buildings thereon standing, bounded north and east by land of the estate of David Summers, deceased, south and west by highway, of which land the petitioner is the owner, and now threatens to sell the same to pay the pretended taxes on said illegally-added sums as aforesaid in said lists for the years 1869 and 1870, and thereby throw a cloud upon the petitioner's title to said land, and deprive the petitioner of the same.

That said respective sums so illegally added as aforesaid to said lists for the years 1869 and 1870 are not liable for any tax levied in and by said town of Woodbury.

Thereupon, praying said court to take his case into consideration and inquire into the truth of the allegations of said petition, and on finding them true to order and decree that said Hotchkiss and his successors in the office of collector of said taxes shall be enjoined and restrained from the levy of said tax warrants and the collection of said taxes from
38 the said real estate or other property of the petitioner, or grant such other relief as to wisdom and justice may appertain, as by said petition on file dated May 27th, 1873, may fully appear.

To said petition a citation was annexed addressed to the sheriff of the county of Litchfield, his deputy, or either of the constables of the town of Woodbury, except L. L. Hotchkiss, in said county, commanding them by authority of the State of Connecticut to summon said Leonard L. Hotchkiss to appear before the superior court to be held at Litchfield, within and for the county of Litchfield, on the third Tuesday of Septem-

ber, A. D. 1873, then and there to show cause, if any he had, why the prayer of said petition should not be granted, as by said citation on file, dated at Woodbury, May 27th, 1873, and duly signed by proper authority, may fully appear.

And thereupon the said Kirtland did obtain from the Hon. Edward I. Sanford, a judge of the superior court, a temporary injunction, ordering the said Leonard L. Hotchkiss to thenceforth absolutely desist and refrain from the further levy or from any further proceeding to collect said taxes under and by virtue of said warrants in said petition described, or either of them, and from placing by means thereof any cloud upon, or in any manner selling or disposing of, said real estate described in said petition, or other property of the petitioner, under a penalty
39 of one thousand dollars in case of a violation of said order, until the then next term of said superior court to be held at Litchfield, in and for said county, on the second Tuesday of September, 1873, and until the court should make further order in the premises, as by said temporary injunction on file, dated May 27th, 1873, appears.

To said injunction an order was annexed that notice of the same should be given to said Hotchkiss by some proper officer leaving with him forthwith a true and attested copy of said petition, citation, and order of injunction, as by said order, which was a part of said injunction-order and was signed by said judge, appears.

Said petition, injunction, citation, and order were duly and legally served on said Leonard L. Hotchkiss, and were duly returned to and entered in the docket of this court at its said September term, 1873, when the parties thereto appeared. And by legal continuances the cause came to the April term, 1875, of said court, when said parties again appeared, and were at issue on the answer of said respondent as on file; and having been fully heard, said court upon due consideration did find the facts as follows, viz:

That the petitioner is a resident of the town of Woodbury, and that on the 30th day of October, 1869, he made and returned to the assessors of said town, in conformity to law, a correct list of all the real
40 and personal property owned by him on the 1st day of October in that year liable to taxation, situated or invested in this State, amounting to $6,941.00, duly verified by his oath.

That on the 15th day of January, 1870, after due notice to the petitioner, the board of relief of said town added to his said list the sum of $18,000.00, making his whole list, as made out by said board, for the purposes of taxation, the sum of $24,941.00.

That the said sum of $18,000.00, added to the petitioner's list as aforesaid, by said board of relief, was invested in bonds in the city of Chicago, State of Illinois, secured on real estate located in said city, by deeds of trust, one of which bonds, given for the sum of $3,000.00, together with the deed of trust securing the payment of said sum, are hereunto annexed, marked Exhibits "A" and "B," and made a part of this finding. The remainder of said $18,000.00 was invested in bonds of the same date, and in the identical words of said bond marked "A," secured by deeds of trust in the identical words of Exhibit B, except as to amounts and names of grantors.

That all the stipulations and agreements in said bonds and deeds of trust contained were duly kept and performed, and the said sum of $18,000.00 was duly paid at the maturity of said bonds, on the 17th day of July, 1874, and again reinvested in said Chicago.

41 It was proved and admitted that the petitioner, in like manner, on the 31st day of October, 1870, made and returned to the

assessors of said town, in conformity to law, a correct list of all the real and personal estate owned by him on the 1st day of October, in that year, liable to taxation, situate or invested in this State, amounting to $4,941.00, duly verified by his oath.

That on the 16th day of January, 1871, after due notice to the petitioner, the board of relief of said town added to his said list the sum of $20,000.00, making his whole list, as made out by said board, for the purposes of taxation, the sum of $24,941.00. The twenty thousand dollars so added consisted of the same bonds above mentioned, with two thousand dollars additional in the same kind of bonds, secured by like deeds of trust.

That the said board of relief added said sum of $18,000.00 to said list of 1869, and said sum of $20,000.00 to his said list of 1870, against the will and protest of the petitioner, and that the amount of tax laid on the list of 1869 was ten mills on the dollar, and eight mills on the dollar on the list of 1870.

That the petitioner, on the 11th day of April, 1870, paid to the collector of taxes for said town of Woodbury all taxes due on his said list of 1869, except the tax laid upon said $18,000.00, added by the board of relief; and that on the 10th day of April, 1871, in like manner he paid to said collector all taxes due on his said list of 1870 except the tax laid upon said $20,000.00, added by the board of relief to that list.

42 That the tax on said $18,000.00, so refused to be paid by the petitioner, amounted to $180, and the tax on said $20,000.00, refused in like manner, amounted to $160. That the respondent, on the 1st day of April, 1873, by virtue of tax-warrants duly directed to him as collector of said town of Woodbury, on said list of 1869 and 1870, made demand of the petitioner for the above mentioned sums, which he refused to pay, claiming said taxes to be illegal.

That the respondent thereafter, on the 2d day of April, 1873, levied his said warrants on the real estate of the petitioner, described in his petition, and advertised the sale thereof in a public newspaper, pursuant to law, said sale to take place at the sign-post in said Woodbury, on the 7th day of June, 1873, for the purposes of paying said taxes, interest, and costs.

That to prevent said sale, and the casting of a cloud upon the title to his said land, he prayed out and caused to be served his said injunction in this suit.

Here follows document marked "A," which see, page , and document marked "B," which see, page .

And upon said facts so found by said court, and by request and agreement of the parties, said court reserved said cause for the advice of the supreme court of errors, then to be held at said Litchfield, within and for said Litchfield County, on the second Tuesday of June,

43 1875, as to what decree should be passed and what judgment rendered upon the facts found and agreed upon as aforesaid, at which last-mentioned court said cause was fully heard, and the same came by legal continuance to the present term of said superior court; and now this court, in conformity to the advice of said supreme court of errors, doth order and decree that the said petition of the said Charles W. Kirtland to this court be dismissed, and that he take nothing thereby; and that said temporary injunction granted by the Hon. Edward I. Sanford, May 27th, 1873, be and it is hereby dissolved, and that the said Leonard L. Hotchkiss recover of the petitioner, the said

Kirtland, his costs taxed and allowed at seventy-seven dollars and forty-five cents, and that execution issue therefor.

Dated at Litchfield, this 15th day of October, 1875.

By the court.

W'M L. RANSOM, *Clerk.*

Whereupon the said Charles W. Kirtland, within the time prescribed by law, filed his motion in error, praying that the record in said cause might be transmitted to the supreme court of errors, at its term then next to be held at Litchfield, within and for said county, on the 2d Tuesday of June, 1876, and bond was duly given to prosecute said motion to effect.

44 *Motion in error.*

Superior court for Litchfield County, September term, 1875.

CHARLES W. KIRTLAND
vs.
LEONARD L. HOTCHKISS.

And the appellant in the above entitled case, within legal time after final judgment, feeling that he is aggrieved by the decision of this court upon the questions of law therein apparent upon the record, moves that the record in this case be transmitted to the supreme court of errors, to be held at Litchfield, in and for the county of Litchfield, on the 2d Tuesday of June, 1876, for the revision of the errors manifest therein.

And for such errors the petitioner assigns the following, to wit:

1. In deciding that the statute of Connecticut, which enacts that "Personal property, in this State, or elsewhere, not expressly exempt by this act shall be deemed, for the purposes of taxation, to include all moneys, credits, choses in action, lands, stocks, except United States stocks, goods, chattels, or effects, or any interest therein. * * * * And such personal property or interest therein, being the property of any person resident in this State, shall be valued and assessed at its just and true value, at the time of such assessment, and set in the
45 list, at its actual valuation, in the list of the town where the owner resides," was not repugnant to the provisions of the Constitution of the United States.

2. In deciding that the authority exercised by the State of Connecticut in passing said statute, so far as it taxes property "elsewhere" than within its territorial jurisdiction, was not repugnant to the provisions of the Federal Constitution.

3. In deciding that the State could, constitutionally, tax property over which it had no territorial jurisdiction or control, to which it afforded no protection, which its process could not reach, and to which it could by no possibility pass title within the State by delivery.

4. In deciding that the State of Connecticut could, under the Constitution of the United States, assess and tax the petitioner for his capital invested in loans in the State of Illinois upon securities taken and held in that State by his agents, under and by virtue of the laws of that State, and under the express stipulations set forth in said contracts recorded in the legal records of said State, that the loan and its collection should be governed by the laws of said State.

5. In deciding that said Kirtland could be constitutionally taxed in

this State for moneys located, invested, and held in the State of Illinois, in the hands of a trustee residing there, and in relation to which he held only the position of cestui qui trust.

46 6. The case finds that the property attempted to be taxed was not "within this State," that the contracts stipulated that the taxes of Illinois should be paid by the borrower, that the State of Illinois had acquired jurisdiction of the said contracts by their having been duly recorded in its public records, and had assumed the same. The court thereupon erred in holding and deciding that this State could, constitutionally, tax property over which another State both had and had assumed jurisdiction.

7. The court erred in not deciding that when another State had assumed jurisdiction of the property for the purposes of protection and taxation, that the State was ousted of jurisdiction and could not constitutionally tax the same property.

8. In deciding that this State could subject the property in question to double taxation. The case finds specially that Kirtland "made and returned a corrected list of all the real and personal property owned by him liable to taxation, situate or invested in this State," and duly paid the taxes thereon. It also finds that the property securing the loan in Illinois was also taxed. The court erred in deciding that a further tax could be levied on it by the State.

9. The mortgage and trust bonds in question having been executed and made payable out of the State, and the parties having stipulated that the contracts should be governed solely by the laws

47 of the State in which they were made, and should be held by a trustee in said State, who alone could enforce said contract, and who was to pay the taxes of the State where made, the laws of the State entering into and forming a part of said contracts, the court erred in deciding that they were taxable here, because to tax them impaired the obligation of contracts, and is, therefore, repugnant to the Constitution of the United States and void.

10. In deciding that by virtue of jurisdiction over the person and domicil of Kirtland, the State had the right to tax his money located and invested out of the State in the hands of a trustee mutually chosen by creditor and debtor, and over which he had no personal control.

11. The court concedes that it cannot tax visible, tangible personal property out of the State, any more than it can tax real estate out of the State. It is equally erroneous and unconstitutional to tax money loaned out of the State in the manner found by this case, because to tax such contracts is to levy a tax and place an impediment upon interstate commerce, and if the State can place any obstruction or condition upon it, it can discriminate between the States, and can assume the power to destroy interstate commerce in money altogether; contracts made in one State and payable in another being interstate contracts.

48 12. If this is not an Illinois contract it is an interstate contract. In either event this State cannot tax it under the Federal Constitution.

13. The case having found that the trust bonds, which formed the subject of taxation, were contracts made in Illinois, with the express stipulation that they were made under and were to be governed solely by the laws of Illinois, and that all taxes were to be paid by the debtor, the court erred in deciding that the Illinois contract might be impaired by adding to the burdens of the non-resident debtor through his creditor; the Connecticut taxes having jurisdiction neither of the contract nor of

the person or domicil of the debtor. The State cannot tax a debt or credit out of the jurisdiction. Debts and credits are not property or things, and it is erroneous to tax simple evidence of debts. Titles to lands out of the State could as well be taxed. If this could be done, property could be taxed in two jurisdictions.

14. In deciding that a State can tax a credit beyond its jurisdiction separate from the fund that secures its payment, and that credits, mortgages, and trust deeds have value for taxation separate from the funds that they represent—thus taxing the evidence of property.

15. As by the laws of Illinois trustees are taxed for the moneys
49 in their hands belonging to their cestui qui trust, the court erred in taxing Kirtland, the cestui qui trust, in this State, having no jurisdiction of the debtor or their debts.

16. The laws of a State where a contract is made, existing at the time it is made, alone enter into it and form a part of it. This contract was made in Illinois under the laws thereof, and the court erred in deciding that it could impair the contract of the parties and add to the burdens of the non-resident debtor who had agreed to pay all taxes, intending all the taxes of the State whose laws entered his contract, by an additional tax thereon under the laws of the State of Connecticut.

17. The fourteenth amendment of the Constitution of the United States prescribes that, "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The court erred in deciding the property in question was legally taxed, because it deprived Kirtland of his extra-territorial property without due process of law.

18. In deciding that said trust bonds could be taxed in this State, while the case finds that said trust funds were taxed through the
50 trustee on the real estate securing the same in the foreign jurisdiction, the statute of Connecticut expressly exempting "any property situated out of this State, when it can be made satisfactorily to appear to the assessor or assessors that the same is fully assessed and taxed in such State to the same extent as is other like property owned by citizens of such State." By our own statute the investment was exempted.

19. In deciding that the State of Connecticut could impose a tax upon a contract, after it is made, and especially after it is made out of the State under the laws of another State, thus impairing the contract, and that contract, too, a foreign one.

20. In not deciding that an obligation made out of the State, payable in legal tenders, is not taxable, because legal tenders are not taxable. The taxing of the contract payable in legal tenders, instead of taxing the legal tenders themselves, is but changing the form of taxation without changing the substance, and is in effect an unconstitutional tax.

Wherefore the petitioner says that the said judgment ought to reversed, and he be restored to all he has lost thereby.

CHARLES W. KIRTLAND,
By his attorney, WILLIAM COTHREN.

51 The foregoing motion is allowed, with stay of judgment, and William Cothren, of Woodbury, is recognized in the sum of $100 to prosecute, &c., and pay all damages in case the said Kirtland fail to prosecute said motion to effect.

Attest:

W'M L. RANSOM, *Clerk.*

The within and foregoing is a true copy of record in said case.
Attest: W'M L. RANSOM, *Clerk.*

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of errors for the county of Litchfield and State of Connecticut, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court of errors before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles W. Kirtland, of Woodbury, in Litchfield County and State of Connecticut, petitioner, against Leonard L. Hotchkiss, of said Woodbury, respondent, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Charles W. Kirtland, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your
53 seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 8th day of July, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] LOREN P. WALDO,
Clerk of the Circuit Court of the United States for the District of Connecticut in the said Circuit.

Allowed by—

JOHN D. PARK,
Chief Justice of the Supreme Court of Errors of the State of Connecticut.

54 The United States of America , greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of errors for Litchfield County and State of Connecticut, wherein Charles W. Kirtland is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment and decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John D. Park, chief judge of the supreme court of rrors of the State of Connecticut, this 8th day of July, in the year of one thousand eight hundred and seventy-six.

JOHN D. PARK,
Chief Justice of the Supreme Court of Errors for the State of Connecticut.

55 STATE OF CONNECTICUT,
County of Litchfield, ss:

WOODBURY, *the 12th day of July*, 1876.

I hereby accept due and legal service of the foregoing writ of error and citation and waive all informalities.

LEONARD L. HOTCHKISS,
Respondent.

56 STATE OF CONNECTICUT, *ss:*

At a supreme court of errors, held at Litchfield, within and for the county of Litchfield, on the second Tuesday of June, A. D. 1876, to wit, on the 13th day of June, 1876.

Present, Hons. John D. Park, chief judge, Elisha Carpenter, LaFayette S. Foster, Dwight W. Pardee, Dwight Loomiss, associate judges.

CHARLES W. KIRTLAND
vs.
LEONARD L. HOTCHKISS.

Be it remembered that Charles W. Kirtland, of Woodbury, in said county, brought to this court his motion in error praying for the revision of the record & judgment of the honorable superior court in and for said county in a cause pending therein, made & passed at the September term of said court, A. D. 1875, wherein the said Charles W. Kirtland was petitioner and Leonard L. Hotchkiss, of Woodbury, was respondent, as by authenticated copies of said record and judgment on file will fully appear.

57 And now said cause having been entered in the docket of this court, the parties duly appeared, by their respective attorneys, when they were fully heard. And on consideration this court is of opinion & doth find that there is no error in the judgment of said court complained of, & it is thereupon considered & adjudged by this court that said judgment of said court be & the same is hereby affirmed.

And it is further considered & adjudged that the respondent in error, the said Leonard L. Hotchkiss, recover of the plaintiff in error, the said Charles W. Kirtland, his costs of suit, taxed & allowed to be $3.70, & that execution issue therefor accordingly.

Whereupon the said Charles W. Kirtland, plaintiff in error, filed his petition & application to the Hon. John D. Park, chief justice of said supreme court of errors, praying that the record & papers in said cause might be transmitted to the Supreme Court of the United States, at its term then next to be held at Washington, in the District of Columbia, on the second Monday in October, A. D. 1876, for the correction of the errors therein contained, which petition & application was allowed, as appears herewith.

58 *Assignment of errors.*

Supreme Court of the United States. October term, 1876.

CHARLES W. KIRTLAND, PLAINTIFF IN ERROR,
vs.
LEONARD L. HOTCHKISS, DEFENDANT IN ERROR.

And the plaintiff in error in the above-entitled case, within legal

time, after final judgment, feeling that he is aggrieved by the decision of the court upon the questions of law apparent upon the record, assigns the following manifest errors therein, to wit:

The court erred and mistook the law—

1. In deciding that the statute of Connecticut which enacts that "personal property in this State or elsewhere, not expressly exempt by this act, shall be deemed, for the purposes of taxation, to include all moneys, credits, choses in action, lands, stocks, except United States stocks, goods, chattels or effects, or any interest therein, * * * and such personal property, or interest therein, being the property of any person resident in this State, shall be valued and assessed at its just and true value at the time of such assessment, and set in the list at its actual valuation in the list of the town where the owner resides," was not repugnant to the provisions of the Constitution of the United States.

59 2. In deciding that the authority exercised by the State of Connecticut in passing said statute, so far as it taxes property "elsewhere" than within its territorial jurisdiction, was not repugnant to the provisions of the Federal Constitution.

3. In deciding that the State could, constitutionally, tax property over which it had no territorial jurisdiction or control, to which it afforded no protection, which its process could not reach, and to which it could by no possibility pass title within the State by delivery.

4. In deciding that the State of Connecticut could, under the Constitution of the United States, assess and tax the petitioner for his capital invested in loans in the State of Illinois upon securities taken and held in that State by his agents, under and by virtue of the laws of that State, and under the express stipulations set forth in said contracts, recorded in the legal records of said State, that the loan and its collection should be governed by the laws of said State.

5. In deciding that said Kirtland could be, constitutionally, taxed in this State for moneys located, invested, and held in the State of

60 Illinois, in the hands of a trustee residing there, and in relation to which he held only the position of cestui qui trust.

6. The case finds that the property attempted to be taxed was not "within this State"; that the contracts stipulated that the taxes of Illinois should be paid by the borrower; that the State of Illinois had acquired jurisdiction of the said contracts by their having been duly recorded in its public records and had assumed the same. The court thereupon erred in holding and deciding that this State could constitutionally tax property over which another State both had and had assumed jurisdiction.

7. The court erred in not deciding that when another State had assumed jurisdiction of the property for the purposes of protection and taxation, that the State was ousted of jurisdiction and could not constitutionally tax the same property.

8. In deciding that this State could subject the property in question to double taxation. The case finds specially that Kirtland "made and returned a correct list of all the real and personal property owned by him liable to taxation, situate or invested in this State," and duly paid the taxes thereon. It also finds that the property securing the loan

61 in Illinois was also taxed. The court erred in deciding that a further tax could be levied on it by the State.

9. The mortgage and trust bonds in question having been executed and made payable out of the State, and the parties having stipulated that the contracts should be governed solely by the laws of the State in which they were made, and should be held by a trustee in said State,

who alone could enforce said contract, and who was to pay the taxes of the State where made, the laws of the State entering into and forming a part of said contracts, the court erred in deciding that they were taxable here, because to tax them impaired the obligation of contracts, and is, therefore, repugnant to the Constitution of the United States, and void.

10. In deciding that, by virtue of jurisdiction over the person and domicil of Kirtland, the State had the right to tax his money located and invested out of the State, in the hands of a trustee mutually chosen by creditor and debtor, and over which he had no personal control.

11. The court concedes that it cannot tax visible, tangible personal property out of the State any more than it can tax real estate out of the State. It is equally erroneous and unconstitutional to tax
62 money loaned out of the State in the manner found by this case, because to tax such contracts is to levy a *a* tax and place an impediment upon inter-State commerce; and, if the State can place any obstruction or condition upon it, it can discriminate between the States, and can assume the power to destroy inter-State commerce in money altogether; contracts made in one State and payable in another being inter-State contracts.

12. If this is not an Illinois contract it is an inter-State contract. In either event this State cannot tax it under the Federal Constitution.

13. The case having found that the trust bonds which formed the subject of taxation were contracts made in Illinois, with the express stipulation that they were made under and were to be governed solely by the laws of Illinois, and that all taxes were to be paid by the debtor, the court erred in deciding that the Illinois contract might be impaired by adding to the burdens of the non-resident debtor, through his creditor, the Connecticut taxes, having jurisdiction neither of the contract nor of the person or domicil of the debtor. The State cannot tax a debt or credit out of the jurisdiction. Debts and credits are not property or things, and it is erroneous to tax simple evidence of debts. Titles
63 to lands out of the State could as well be taxed. If this could be done, property could be taxed in two jurisdictions.

14. In deciding that a State can tax a credit beyond its jurisdiction, separate from the fund that secures its payment, and that credits, mortgages, and trust deeds have value for taxation separate from the funds that they represent, thus taxing the evidence of property.

15. As by the laws of Illinois trustees are taxed for the moneys in their hands belonging to their cestui qui trust, the court erred in taxing Kirtland, the cestui qui trust, in this State, having no jurisdiction of the debtor or the debts.

16. The laws of a State where a contract is made, existing at the time it is made, alone enter into it and form a part of it. This contract was made in Illinois, under the laws thereof, and the court erred in deciding that it could impair the contract of the parties, and add to the burdens of the non-resident debtor, who had agreed to pay all taxes, intending all the taxes of the State whose laws entered his contract, by an additional tax thereon under the laws of the State of Connecticut.

64 17. The fourteenth amendment of the Constitution of the United States prescribes that, "nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The court erred in deciding the property in question was legally taxed, be-

cause it deprived Kirtland of his extraterritorial property "without due process of law."

18. In deciding that said trust bonds could be taxed in this State, while the case finds that said trust funds were taxed, through the trustee, on the real estate securing the same in the foreign jurisdiction. The statute of Connecticut expressly exempting "any property situated out of this State, when it can be made satisfactorily to appear to the assessor or assessors that the same is fully assessed and taxed in such State to the same extent as is other like property owned by citizens of such State." By our own statute the investment was exempted.

19. In deciding that the State of Connecticut could impose a tax upon a contract after it is made, and especially after it is made out of the State under the laws of another State, thus impairing the contract, and that contract, too, a foreign one.

65 20. In not deciding that an obligation made out of the State, payable in legal tenders, is not taxable, because legal tenders are not taxable. The taxing of the contract payable in legal tenders instead of taxing the legal tenders themselves is but changing the form of taxation without changing the substance, and is in effect an unconstitutional tax.

Wherefore the petitioner says that the said judgment ought to be reversed, and he be restored to all he has lost thereby.

CHARLES W. KIRTLAND,
By his attorney, WILLIAM COTHREN.

66 STATE OF CONNECTICUT,
Litchfield County, ss:

I, W'm L. Ransom, clerk of the superior court & also of the supreme court of errors in & for said Litchfield County, do hereby certify that the within & foregoing is a true & perfect copy of the petition, original record, decree, motion in error, assignment of errors, & judgment, & a true & perfect copy of all the papers in said cause.

In testimony whereof I have hereunto set my hand as clerk & affixed the seal of said courts, at Litchfield, in said county, this 31st day of July, A. D. 1876.

[SEAL.] W'M L. RANSOM, *Clerk.*

67 Know all men by these presents that we, Charles W. Kirtland, Benjamin Fabrique, William E. Woodruff, of Woodbury, in Litchfield County and State of Connecticut, are held and firmly bound unto Leonard L. Hotchkiss of said Woodbury in the full and just sum of two thousand dollars, to be paid to the said Leonard L. Hotchkiss, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this 6th day of July, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas, lately, at a supreme court of errors held at Litchfield within and for the county of Litchfield in said State, in a suit depending in said court, between Charles W. Kirtland, of said Woodbury, petitioner, and Leonard L. Hotchkiss, of said Woodbury, respondent, final judgment and decree was rendered against the said Charles W. Kirtland, and the said Charles W. Kirtland having obtained a writ of error in said case and filed a copy thereof in the clerk's office of the said court to
68 reverse the judgment and decree in the aforesaid suit, and a citation directed to the said Leonard L. Hotchkiss, citing and ad-

monishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the 2d Monday of October next:

Now the condition of the above obligation is such that if the said Charles W. Kirtland shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES W. KIRTLAND. [SEAL.]
BENJAMIN FABRIQUE. [SEAL.]
WILLIAM E. WOODRUFF. [SEAL.]

Sealed and delivered in presence of—
HENRY L. JEFFREY.
GEORGE LATHROP.

Approved by me.

JOHN D. PARK,
Chief Justice of the Supreme Court of Errors of the State of Connecticut.

A true copy of the original filed in my office July 14, 1876.
Attest.

WM L. RANSOM.

(Indorsed:) 1876. Octo. term. No. 683. Kirtland vs. Hotchkiss. Copy of appeal bond. Filed 2 September, 1876.

(Indorsement on cover:) No. 141. Charles W. Kirtland, plaintiff in error, vs. Leonard L. Hotchkiss. Connecticut supreme court of errors, Litchfield County. Filed 2nd September, 1876.

REC. 141—3

United States Supreme Court.

No. 23.

CHARLES W. KIRTLAND,
Plaintiff in Error,

against

LEONARD L. HOTCHKISS,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

WILLIAM COTHREN,
Attorney for Plaintiff in Error.

ASHBEL GREEN,
WILLIAM COTHREN,
JULIEN T. DAVIES,
Of Counsel.

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U. S. Supreme Court.

CHARLES W. KIRTLAND,
Plaintiff in Error,
vs.
LEONARD L. HOTCHKISS,
Defendant in Error.

Statement of the Case.

This case is brought before this Court by means of a writ of error to the Supreme Court of Errors of the State of Connecticut, allowed July 8th, 1876 (fol. 52).

The action was brought in the Superior Court of Litchfield County, Connecticut, by Charles W. Kirtland, a citizen of Connecticut, to obtain a perpetual injunction against Leonard L. Hotchkiss, Collector of Taxes of the Town of Woodbury, Litchfield County, Connecticut, to restrain said Hotchkiss and his successors in the office of Collector of Taxes from the enforcement of certain tax warrants levied upon real estate of Kirtland in said town of Woodbury, and from the collection from said real estate of certain taxes claimed by Kirtland to have been unlawfully assessed (fol. 3).

These taxes were assessed against Kirtland by reason of his ownership of certain bonds held in the City of Chicago, Illinois, secured by mortgage of real estate in said city.

In the progress of the cause the following stipulation was entered into:

"The parties agree that *the only question in the case*, is whether said bonds owned by the petitioner, drawn in the form and secured in the manner and form as above stated, were or were not liable to taxation under the statute in such case made and provided. If they were so liable, then the injunction to be dismissed; if not, then the injunction to be made perpetual" (fol. 14).

Upon the inception of the action, a temporary injunction was granted against the enforcement of the alleged illegal taxes (fol. 9).

By agreement of the parties, in accordance with the practice of the State of Connecticut, the cause was submitted upon a statement or finding of facts, to the Supreme Court of Errors of Connecticut, as to what decree should be passed and what judgment rendered by the Superior Court upon these facts. In accordance with the advice of the Supreme Court of Errors, a decree was entered in the Superior Court dismissing the petition of Kirtland and dissolving the temporary injunction (fol. 43). Kirtland thereupon assigned errors and made a motion in error to the Supreme Court of Errors (fol. 44), by which latter Court the judgment of the Superior Court was affirmed (fol. 57). Whereupon Kirtland obtained his writ of error to this Court (fol. 57).

There is no dispute about the facts of this cause. They will be found contained in the "Finding" (fol. 11), upon which the cause was heard for the first time in the Supreme Court of Errors, and in the "Decree" (fol. 40) of the Superior Court.

The following appear, therefore, as admitted facts in the cause:

> 1. That on October 30th, 1869, the plaintiff in error, being a resident of Woodbury, made and returned to the Assessor of that town, in conformity to law, a correct list of all the real and personal property owned by him October 1st,

1869, liable to taxation, *situated or invested in the State of Connecticut.*

2. That, January 15th, 1870, after notice to him, the sum of $18,000 was added to his list.

3. That the sum of $18,000 was invested in bonds, that were themselves held in the City of Chicago, secured by deeds of trust on real estate located in said city, and that the said sum of $18,000 was duly paid and reinvested in said Chicago. (Copies of one of these bonds and of one of the deeds of trust appear in the record as folios 15 and 23 respectively).

4. That the bonds were made in Chicago by Edmund A. Cummings, of that city, to Charles W. Kirtland, the plaintiff in error, of the Town of Woodbury, State of Connecticut, were dated in Chicago, and provided that all payments, both of principal and interest, should be made in the City of Chicago, State of Illinois.

5. That each of the bonds contained this clause:

"It is hereby expressly declared that this bond or obligation is made under and is in all respects to be construed by the laws of the State of Illinois, and is given for an actual loan of money made at the said City of Chicago by the said Charles W. Kirtland to the said Edmund A. Cummings on the day of the date hereof." Each bond was accompanied by a warrant of attorney (fol. 18), and by coupons representing the various interest payments to be made thereon.

6. That each deed of trust was dated July 17, 1869, and was made by Edmund A. Cummings and wife, in Chicago, to Norman C. Perkins of the same city as trustee. After reciting the bond,

payment of which it was intended to secure, each deed of trust conveyed to the trustee certain real estate in the City of Chicago, authorizing him, upon default in the payment of any part of the principal or interest of the said bond, to sell the granted premises at public auction in the City of Chicago. By the terms of each deed of trust, Cummings agreed to pay all taxes and assessments on the described real estate, when the same became due and payable.

7. That in like manner, the plaintiff in error, on October 31, 1870, made and returned to the Assessor of Woodbury, in conformity to law, a correct list of all the real and personal estate owned by him, October 1, 1870, liable to taxation, situated or invested in the State of Connecticut.

8. That on January 16th, 1871, after notice to him, the sum of $20,000 was added to his list, said $20,000 consisting of the $18,000 of bonds above mentioned, with two thousand dollars additional, invested in similar bonds, secured by like deeds of trust.

9. That the said sums of $18,000 and $20,000 were added to the lists of the plaintiff in error, for 1869 and 1870 respectively, against his will and protest, and that the plaintiff in error has paid all his taxes for the years 1869 and 1870 to the proper official, except the sums laid upon the bonds aforesaid in those years respectively.

10. That the defendant in error, Hotchkiss, by virtue of tax warrants duly directed to him, as Collector of the Town of Woodbury, on said lists of 1869 and 1870, made demand on the plaintiff in error for the said taxes, April 1st, 1873, and upon refusal by the plaintiff in error, on April 2, 1873, levied the warrants upon the

real estate described in the petition, and advertised the sale thereof in a public newspaper, pursuant to law, said sale to take place at the signpost in said Woodbury, June 7, 1873, for the purpose of paying said taxes, interest and costs.

11. That to prevent said sale and the casting of a cloud upon the title to his said land, the plaintiff in error prayed out and caused to be served the temporary injunction aforesaid.

Assignment of Errors.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1876.

CHARLES W. KIRTLANE,
Plaintiff in Error,

vs.

LEONARD L. HOTCHKISS,
Defendant in Error.

And the plaintiff in error in the above-entitled case, within legal time after final judgment, feeling that he is aggrieved by the decision of the Court upon the questions of law apparent upon the record, assigns the following manifest errors, to wit:

The Court erred and mistook the law—

1. In deciding that the statute of Connecticut, which enacts that "personal property in this State or elsewhere, not expressly exempt by this act, shall be deemed, for the purposes of taxation, to include all moneys, credits, choses in action, lands, stocks, except

United States stocks, goods, chattels or effects, or any interest therein, * * * * and such personal property or interest therein, being the property of any person resident in this State, shall be valued and assessed at its just and true value at the time of such assessment, and set in the list at its actual valuation in the list of the town where the owner resides," was not repugnant to the provisions of the Constitution of the United States.

2. In deciding that the authority exercised by the State of Connecticut in passing said statute, so far as it taxes property "elsewhere" than within its territorial jurisdiction, was not repugnant to the provisions of the Federal Constitution.

3. In deciding that the State could constitutionally tax property over which it had no territorial jurisdiction or control, to which it afforded no protection, which its process could not reach, and to which it could by no possibility pass title within the State by delivery.

4. In deciding that the State of Connecticut could, under the Constitution of the United States, assess and tax the petitioner for his capital invested in loans in the State of Illinois, upon securities taken and held in that State by his agents, under and by virtue of the laws of that State, and under the express stipulations set forth in said contracts, recorded in the legal records of said State, that the loan and its collection should be governed by the laws of said State.

5. In deciding that said Kirtland could be constitutionally taxed in this State for moneys located, invested and held in the State of Illinois in the hands of a trustee residing there,

and in relation to which he held only the position of *cestui que* trust.

6. The case finds that the property attempted to be taxed was not "within this State;" that the contracts stipulated that the taxes of Illinois should be paid by the borrower; that the State of Illinois had acquired jurisdiction of said contracts by their having been duly recorded in its public records, and had assumed the same. The Court thereupon erred in holding and deciding that this State could constitutionally tax property over which another State both had and had assumed jurisdiction.

7. The Court erred in not deciding that when another State had assumed jurisdiction of the property for the purposes of protection and taxation that the State was ousted of jurisdiction and could not constitutionally tax the same property.

8. In deciding that this State could subject the property in question to double taxation. The case finds specially that Kirtland "made and returned a correct list of all the real and personal property owned by him liable to taxation, situate or invested in this State," and duly paid the taxes thereon. It also finds that the property securing the loan in Illinois was also taxed. The Court erred in deciding that a further tax could be levied on it by the State.

9. The mortgage and trust bonds in question having been executed and made payable out of the State, and the parties having stipulated that the contracts should be governed solely by the laws of the State in which they were made, and should be held by a trustee in said State, who alone could enforce said contract, and who was to pay the taxes of the State where made,

the laws of the State entering into and forming a part of said contracts, the Court erred in deciding that they were taxable here, because to tax them impaired the obligation of contracts, and is, therefore, repugnant to the Constitution of the United States and void.

10. In deciding that by virtue of jurisdiction over the person and domicil of Kirtland the State had the right to tax his money located and invested out of the State in the hands of a trustee mutually chosen by creditor and debtor, and over which he had no personal control.

11. The Court concedes that it cannot tax visible, tangible, personal property out of the State any more than it can tax real estate out of the State. It is equally erroneous and unconstitutional to tax money loaned out of the State in the manner found by this case, because to tax such contracts is to levy a tax and place an impediment upon inter-state commerce; and if the State can place any obstruction or condition upon it it can discriminate between the States and can assume the power to destroy inter-state commerce in money altogether. contracts made in one State and payable in another being inter-state contracts.

12. If this is not an Illinois contract it is an inter-state contract. In either event this State cannot tax it under the Federal Constitution.

13. The case having found that the trust bonds which formed the subject of taxation were contracts made in Illinois with the express stipulation that they were made under and were to be governed solely by the laws of Illinois, and that all taxes were to be paid by the debtor, the Court erred in deciding that the Illinois contract might be im-

paired by adding to the burdens of the non-resident debtor, through his creditor, the Collector of Taxes, having jurisdiction neither of the contract nor of the person or domicil of the debtor. The State cannot tax a debt or credit out of the jurisdiction. Debts and credits are not property or things, and it is erroneous to tax simple evidence of debt. Titles to land out of the State could as well be taxed. If this could be done, property could be taxed in two jurisdictions.

14. In deciding that a State can tax a credit beyond its jurisdiction, separate from the fund that secures its payment, and that credits, mortgages and trust deeds have value for taxation separate from the funds that they represent, thus taxing the evidence of property.

15. As, by the laws of Illinois, trustees are taxed for the moneys in their hands belonging to their *cestui qui* trust the Court erred in taxing Kirtland, the *cestui qui* trust in this State, having no jurisdiction of the debtor or the debts.

16. The laws of a State where a contract is made, existing at the time it is made, alone enter into it and form a part of it. This contract was made in Illinois, under the laws thereof, and the Court erred in deciding that it could impair the contract of the parties and add to the burdens of the non-resident debtor who had agreed to pay all taxes, including all the taxes of the State whose laws entered into his contract, by an additional tax thereon, under the laws of the State of Connecticut.

17. The Fourteenth Amendment of the Constitution of the United States prescribes that: "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction

the equal protection of its laws." The Court erred in deciding the property in question was legally taxed, because it deprived Kirtland of his extra-territorial property "without due process of law."

18. In deciding that said trust bonds could be taxed in this State while the case finds that said trust funds were taxed through the trustee on the real estate, securing the same in the foreign jurisdiction. The Statute of Connecticut expressly exempting "any property situated out of this State, when it can be made satisfactorily to appear to the assessor or assessors that the same is fully assessed and taxed in such State to the same extent as is other like property owned by citizens of such State." By our Statute the investment was exempted.

19. In deciding that the State of Connecticut could impose a tax upon a contract after it is made, and especially after it is made out of the State under the laws of another State, thus impairing the contract, and that contract, too, a foreign one.

20. In not deciding that an obligation made out of the State, payable in legal tenders, is not taxable, because legal tenders are not taxable. The taxing of the contract payable in legal tenders instead of taxing the legal tenders themselves, is but changing the form of taxation without changing the substance, and is in effect an unconstitutional tax.

These assignments in error contain, in brief, the following propositions:

That the Court below was in error in determining;

(1) That the statute of Connecticut in question, did not tax a subject to which a situs must

be assigned beyond the territorial limits of that State.

Errors Nos. 1, 2, 3, 4, 5, 8, 10, 13, 14.

(2) That so much of the Statute in question as taxes property situated "elsewhere" than in the State of Connecticut is repugnant to the provisions of the Constitution of the United States, because in taxing property so situated (to-wit, the bonds of the plaintiff in error):

(*a*) It interferes with the sovereignty of the State of Illinois.

Errors Nos. 6, 7, 15.

(*b*) It violates the obligation of a contract.

Errors Nos. 9, 13, 16, 19.

(*c*) It impedes commerce between the States.

Errors Nos. 11, 12.

(*d*) It takes property without due process of law.

Error No. 17.

(*e*) It taxes legal tenders in effect.

Error No. 20.

The plaintiff in error also insists that the Statute in question violates Section 2, Article IV. of the Constitution of the United States, by which it is provided that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The plaintiff in error also insists that the Statute in question violates Section 1, Article IV. of the said Constitution, by which it is provided that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

The right of the plaintiff in error to specify these last objections in this Court for the first time is established by

Crapo *vs.* Kelly, 16 Wallace, 610.

Murray *vs.* Charleston, 96 U. S., 442.

The following are the provisions of the Statutes of Connecticut applicable to this case:

LAWS OF CONNECTICUT, REVISION OF 1866, PAGE 709, TITLE 64, CHAPTER I, SECTION 8.

"Personal property in this State or *elsewhere*, not expressly exempted by this act, shall be deemed for the purposes of taxation, to in-include *all moneys*, credits, choses in action, bonds, notes, stocks (except United States stocks), goods, chattels or effects or any interest therein; all ships or vessels propelled by steam or wind, whether at home or abroad or whether registered, enrolled or licensed in this State or elsewhere, or any interest, either legal or equitable, therein; and such personal property or interest therein, being the property of any person resident in this State, shall be valued and assessed at its just and true value at the time of such assessment, and set in the list at its actual valuation in the list of the town where the owner resides, except when otherwise provided; but this section shall not be deemed to embrace money or property actually invested in the business of merchandising or manufacturing, when located out of this State."

This statute is construed by the Supreme Court of Connecticut as follows:

"The first part of this statute is broad enough to include not only debts due from citizens of other States, but also goods and chattels without the State. The latter, however, are exempt by the terms of Section 24, page 713. The eighth section also exempts money or property invested in the business of merchandising or manufacturing out of the State. These exemptions are in the nature of exceptions, and clearly imply that but for them all such property would be taxable by the letter of the statute.

"There is no exception in favor of debts due from parties out of the State, and hence the reason-

able construction of the statute is that such debts are taxable. To remove all doubt on the subject, the Legislature, in 1872, made them taxable in more explicit terms. We regard that statute as explanatory of the act under consideration, and not an alteration thereof. We entertain no doubt, therefore, as to the intention of the Legislature."

Opinion of Judge Carpenter in this case in the Supreme Court of Errors, in Connecticut, 42 Connecticut, page 435.

The provisions of the act of 1872 of the Legislature of Connecticut above referred to, are the following:

"SECTION 1. All moneys loaned by residents of this State to any person, persons or corporations, out of this State, as money at interest, whether secured by mortgage or otherwise, and all bonds issued by and loans made to any railroad company located out of the State of Connecticut, and owned and made by any residents of this State, shall be held and deemed to be liable to taxation, and included among the taxable property mentioned in the eighth section of the act to which this is an addition; any law or custom exempting the same from taxation notwithstanding."

Ch. CXIII, Laws of 1872, approved Aug. 2, 1872, page 107, Public Acts of Connecticut.

The following provisions of the Revision of 1866, Title 64, Chapter I, page 715, are important:

"SECTION 35. If any person resident in any town in this State shall be indebted to any other person resident in this State, in such a manner that the debt is liable to be assessed and set in the list of the person to whom the same is due, as money at interest, such debtor may apply to the Board of Relief for such town, and on his offering to them satisfactory proof of such debt, such board shall deduct the amount of such debt from the list of such debtor

and add the same to the list of the creditor, if resident in the same town; and if such creditor resides in any other town in this State, such Board of Relief shall give notice of such fact, by mail or otherwise, to the Board of Relief of the town where such creditor resides, except where such debt is secured by mortgage on real estate, and such Board may add such sum to the list of such creditor; but no Board of Relief shall add to the list of such creditor, under the provisions of this section, without first giving him notice in the manner prescribed by the provisions of the thirty-third section of this act, to appear and show cause, if any he have, why such addition should not be made; nor shall any deduction be made from the list of any debtor in manner hereinbefore provided, except from the list of real and personal estate assessed and set in the list of such debtor.

"SEC. 36. All money at interest secured by mortgage upon real estate, situated within this State, shall be set in the list and taxed only in the town where said real estate is situated, if the debtor resides in such town.

"SEC. 37. The assessors who may omit any such real estate, or any amount equivalent to the valuation thereof, from the list of any person, because of such indebtedness, or Board of Relief who may reduce such list for such cause, shall add the same to the list of the creditor, if resident in the same town; but if such creditor does not reside in such town, said assessors or Board of Relief shall make a list against such creditor, embracing such indebtedness, and shall give him notice thereof in writing under their hands within ten days thereafter; and he may appear before such assessors or Board of Relief within ten days after said notice shall have been given, and show cause why such indebtedness should not be assessed against him."

Point I.

THE STATUTE OF CONNECTICUT ABOVE SET FORTH BY ITS TERMS DIRECTS THE TAXATION THAT IS HERE COMPLAINED OF.

In this case the Court is not called upon to decide whether or not a statute, unobjectionable in its terms, has received an improper application.

Kennard *vs.* State of Louisiana, *ex rel.* Morgan, 92 U. S. (2 Otto), 480.

The statute in question directs that personal property, "in this State or *elsewhere*," for the purposes of taxation, shall be held to include all moneys, credits, choses in action, &c.

The Supreme Court of Errors of Connecticut have construed this statute as directing the taxation that the plaintiff in error regards as unjustifiable.

Kirtland *vs.* Hotchkiss, 42 Conn., 435.

The Statute by its terms, therefore, directly states that money loaned by one of its residents outside of the borders of the State of Connecticut, even if it is to be deemed property situated beyond the borders of the State of Connecticut, shall be assessed to the creditor, and in his hands subject to taxation by the State of Connecticut.

No question is raised with respect to a want of compliance with the Statute by the State officials. The inquiry, therefore, here conducted, is solely with respect to the validity of this Statute.

Point II.

EITHER PROPERTY OR ACTS OF BUSINESS SITUATED WITHOUT THE JURISDICTION OF THE STATE OF CONNECTICUT, ARE BURDENED BY THE TAXATION OF THE PLAINTIFF IN ERROR BY REASON OF HIS OWNERSHIP OF THE BONDS IN QUESTION.

(A) The maxim "*mobilia personam sequuntur*" should not be permitted to compel the conclusion, that in taxing the bonds of the plaintiff in error, the State of Connecticut taxed property situate within its territorial limits.

The defendant in error contends, that there is here presented no case of extra-territorial taxation; that the Statute of Connecticut, above cited, does not direct extra-territorial taxation, in authorizing the taxation of the bonds of the plaintiff in error. The ancient maxim, that "personal property follows the owner," is invoked as authority to dispose of this matter absolutely and without further discussion. It is claimed that this old dictum should control the solution of the question of what situs shall be assigned to that which may be found to be the subject of taxation in this case by the State of Connecticut. The Supreme Court of Errors of the State of Connecticut places its decision upon the weight assigned to this maxim, and is controlled by its force, in allotting an artificial situs in the State of Connecticut to the debts evidenced by the bonds of the plaintiff in error.

The Court says that the right of the plaintiff in error to receive his principal and interest is "a personal right, and accompanies the person of the creditor."

42 Conn., page 438.

It is claimed, however, by the plaintiff in error that this maxim carries with it no controlling weight of authority in itself. This maxim, indeed, in many

cases, declares the rule that an examination of the particular circumstances attending a given transaction with respect to personal property, and the laws of the State of the domicil of the owner and of the situs of the property, shows to be the proper one. It does not, however, furnish a safe rule for guidance or control of judicial decision. When such a decision has been arrived at in particular cases, this maxim, in some instances, is a convenient form of its embodiment. The creation of the law, however, should not be permitted to control its creator.

(*a*) This maxim has no force independent of international comity.

"Modern writers frequently denote this view by "the formula, '*mobilia ossibus inhærent*,' and in "such a manner that one would believe that the "formula was found universally among the an- "cients. This, however, is not true, and I cannot "give the source of this formula."

Savigny System des Heutigen Römischen Rechts, Vol. 8, page 171, section 366.

Many consider that the doctrine had its origin in the middle ages, at a time when commerce was first becoming of importance. It was applied then with respect to transfers of goods in foreign parts, made by an owner at his domicil. The reason for the rule seems to be, that the owner could not be expected to know where his goods in transit might be at any particular time, or to be acquainted with the laws of the foreign countries in which those goods might be temporarily sojourning.

"The probability is that the doctrine itself had not its origin in any distinction between real laws or personal laws, or in any fictitious annexation of them to the person of the owner, or in their incapacity to have a fixed situs; but in an enlarged policy, growing out of their transitory nature and the general convenience of nations."

Story, Conflict of Laws, § 379.

"The old maxims, '*mobilia personam sequuntur*' "and '*mobilia ossibus inhærent*,' were originated "by the mediæval jurists at a time when movable "property consisted mainly of gold or jewels, which "could be easily carried by the owner from place to "place, or secreted by him in spots known only to "himself."

It was necessary from public policy "to subject "land to the *lex rei sitæ*, while personalty, which "no one could conveniently accumulate beyond a "certain limit, was allowed to pass without no-"tice."

Wharton's Private International Law, § 11.

"But these doctrines have been insensibly chang-"ing with the change of personalty to realty, and "though the maxims still linger in the pages of our "most eminent text-books, they are discarded in "practical jurisprudence."

Id., § 13.

Even in its early application this doctrine was never permitted to control, to the prejudice of citizens of the place where the goods were situate, the provisions of law there prevailing; although as a matter of comity it was allowed to govern, when it did not operate injuriously upon the rights of such citizens.

Wharton, following Savigny, substantially repudiates it, except so far as it is allowed as a matter of comity by the nation within whose territory the property is situated.

Wharton's Private International Law, Sections 297 *et seq.*

Westlake's Private International Law, at page 126, gives the following as the earliest form of statement of international comity:

"I. *Leges cujusque imperii vim habent intra* "*terminos ejusdem reipublicæ, omnesque ei* "*subjectos obligant, nec ultra.*

"II. *Pro subjectis imperio habendi sunt* "*omnes qui intra terminos, ejusdem reperiuntur,* "*sive in perpetuum, sive ad tempus ibi commo-* "*rentur.*

"III. *Rectores imperiorum id comiter agunt* "*ut jura cujusque populi intra terminos ejus* "*exercita teneant ubique suam vim, quatenus* "*nihil juri aut potestati alterius imperantis* "*ejusque civium prœjudicetur.*"

Huber. De Conflictu Legum.

"1. The laws of every empire have force "within the limits of that government, "and are obligatory on all within its "bounds.

"2. All persons within the limits of a "government are considered as subjects, "whether their residence is permanent or "temporary.

"3. By the courtesy of nations, what-"ever laws are carried into execution "within the limits of any government, are "considered as having the same effect "everywhere, so far as they do not occa-"sion a prejudice to the rights of the other "government or their citizens."

See 35 N. Y., 658.

This Court has adopted, in the application of this doctrine that personal property follows the owner, the rule that this fiction "yields whenever it is "necessary for the purposes of justice that the ac-"tual situs of the thing should be examined."

Green *vs.* Van Buskirk, 7 Wall., 150.

See also Hervey *vs.* R. I. Locomotive Works, 3 Otto, 664.

The maxim "*mobilia personam sequuntur*" is permitted to have any force with respect to visible tangible property solely by virtue of comity. The doctrine does not express a right that can

be claimed, but depends for its application upon the permission of the State having possession of the property.

Lewis *vs.* Woodford, 58 Tenn., 25.

If a transfer of personal property at the domicil of the owner is recognized in a foreign state, such recognition is due not to any inherent or intrinsic force in the act of transfer, but to the fact that there is no legislation adverse to such recognition in the state of the situs of the property.

This principle is recognized even by the adherents of the old maxim.

"Personal property has no locality; and even with respect to that it is not correct to say that the law of England gives way to the law of the foreign country; but that it is part of the law of England that personal property shall be distributed according to the *jus domicilii*."

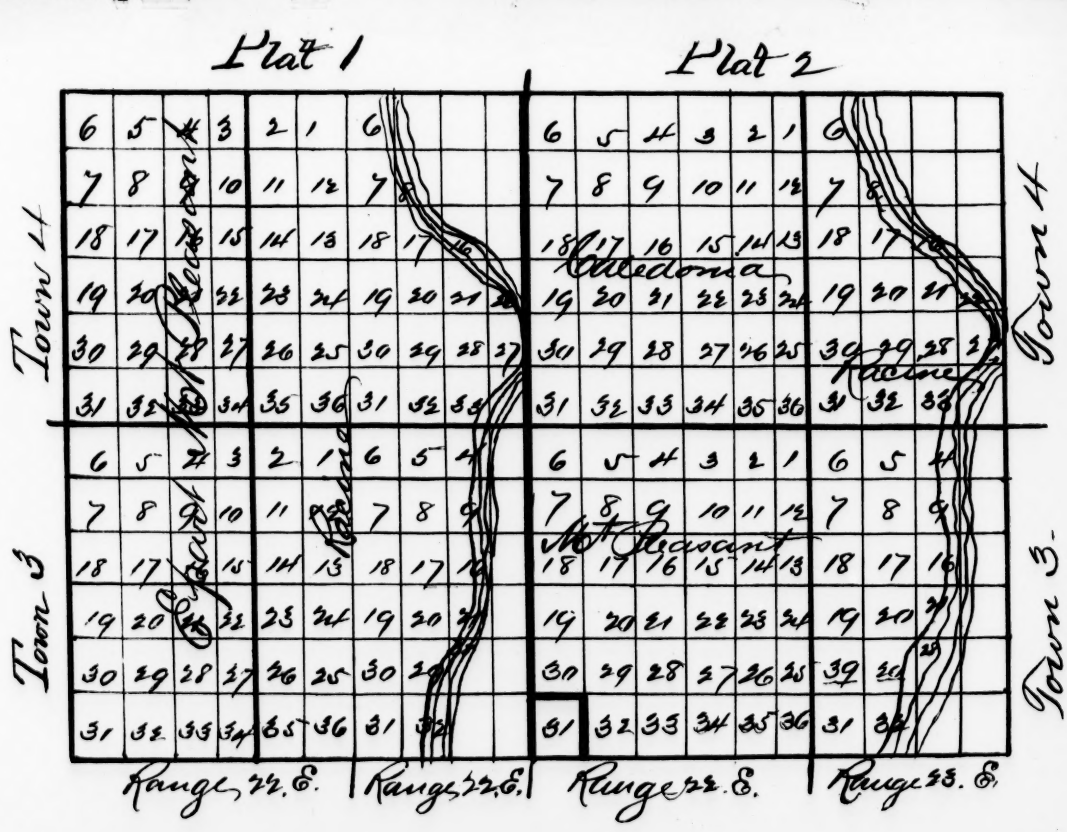
Doe, *J.* Birtwhistle *vs.* Vardill, 3d Barn. & Cresw., 438, 451, 452.

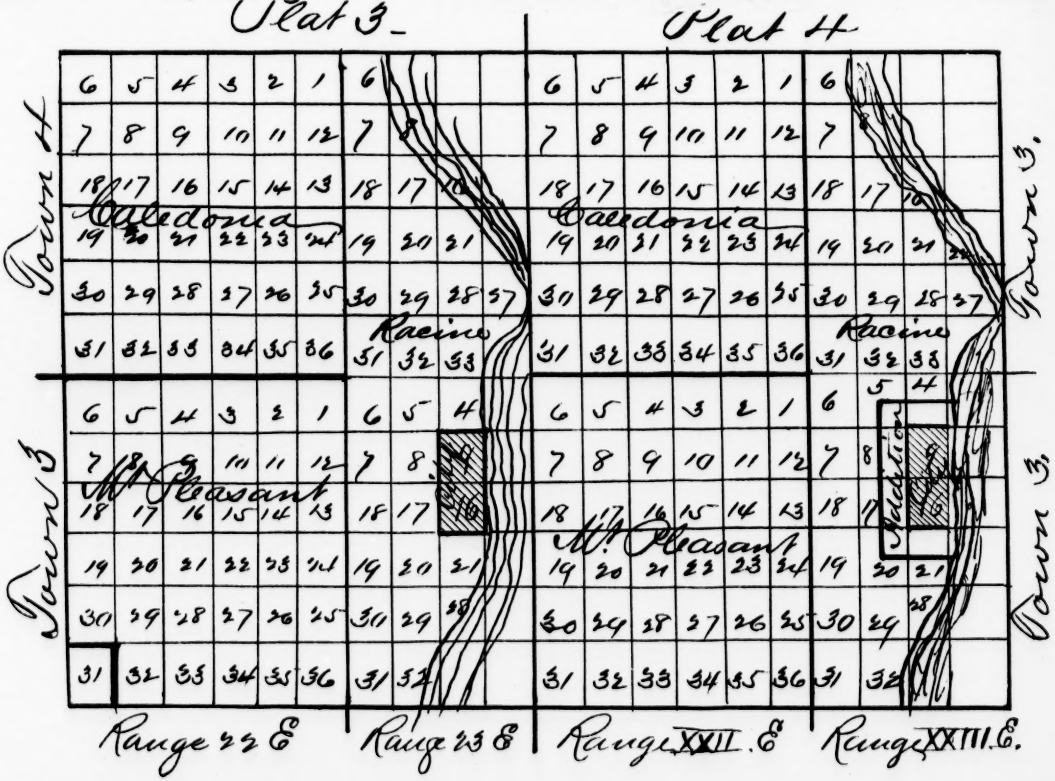
Foreign securities are to be regarded as heritable or movable according to the law of the foreign country.

Downie *vs.* Downie's Trustees, Cases Court of Sessions (Third Series), Vol. 4, p. 1067 (4 Morph. 1066).

(*b.*) It is now well settled that in disputed questions of title, the actual situs of visible, tangible property is inquired into in the event of any conflict between the law of the *locus rei sitæ*, and that of the domicil of the owner. The sovereignty within whose teritorial limits the property is found is held in such cases to have exclusive jurisdiction over it, in defiance of the maxim that personal property follows the owner.

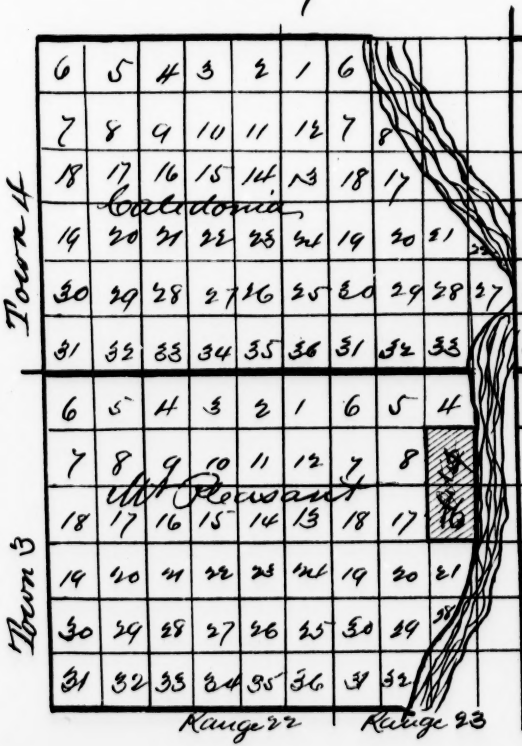
Green *vs.* Van Buskirk, 5 Wallace, 307.
Green *vs.* Van Buskirk, 7 Wallace 139.


Plat 1
Plat 2
Town 4
Town 3
Range 22. E.
Range 22. E.
Range 22. E.
Range 23. E.
Mt. Pleasant
Caledonia
Racine

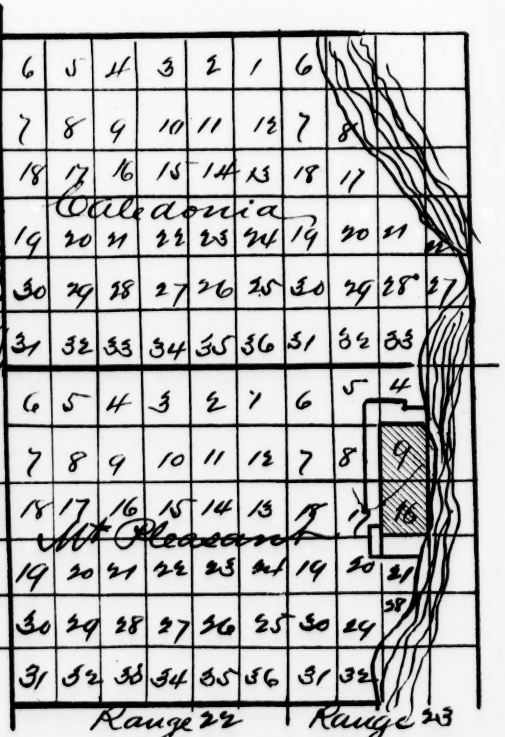

Plat 3
Plat 4
Town 4
Town 3
Caledonia
Racine
Mt. Pleasant
Caledonia
Racine
Mt. Pleasant
Addition
Town 3
Range 22 E
Range 23 E
Range XXII E
Range XXIII E

Town 4
Town 3
Caledonia
Racine
Mt Pleasant
Orwell
Range 22 E.
Range 23 E.

Plat 7


Caledonia
Mt Pleasant
Town 4
Town 3
Range 22
Range 23

Plat 8


Caledonia
Mt Pleasant
Range 22
Range 23

section in width, on the three land sides of the city, as shown by Plat No. 4.

The Supreme Court of the State of Wisconsin, in the year 1861, in the case of *Slawson vs. The City of Racine*, reported in volume 13 of the Wisconsin Supreme Court Reports, page 398 et seq., adjudged the said act to be unconstitutional and void; and thereafter and until the year 1871, when a portion of the same territory was annexed to the city, said city exercised no jurisdiction over said addition, and the towns of Mt. Pleasant and Racine did resume jurisdiction over the same.

68 [Here follows diagram, marked page 68.]

Sixth. The legislature of Wisconsin, by an act published as ch. 180, Local Laws of 1856, and approved Mch. 20th, 1856, changed the boundaries of the towns of Racine and Mt. Pleasant, and defined the same as shown by *Plat* 5. The dotted line represents the addition mentioned in 13th Wis., 398.

Seventh. The legislature of Wisconsin, by an act approved February 3d, 1857, and published as chapter 68 of the local laws of that year, changed the boundaries of the three towns, Racine, Mt. Pleasant, and Caledonia, and established their boundaries as shown by *Plat No.* 6. The dotted line of the plat represents the addition adjudged void in 1861.

It is also admitted and agreed that the board of county supervisors of the county of Racine, on or about the 26th day of November, 1856, by act or resolution of the board, changed the boundaries of said three towns, and fixed the boundaries of said towns respectively as the same are fixed by said ch. 68 of the Local Laws of 1857, above cited.

69 [Here follows diagram, marked page 69.]

Eighth. The county board of supervisors of the county of Racine, on or about the 2d day of Dec., 1859, changed the name of the town of Racine, in said county, to Orwell.

Ninth. The legislature of Wisconsin, by an act approved Mch. 30th, 1860, and published as ch. 242 of the General Laws of the year 1860, vacated the town of Orwell and attached all of its territory to the towns of Mount Pleasant and Caledonia, as shown by the Plat No. 7.

Tenth. The legislature of Wisconsin, by an act approved Mch. 17, 1871, published as chapter 348, Local Laws of 1871, made an addition to the city of Racine, particularly describing the same, and Plat No. 8 shows the same approximately.

70 *Eleventh.* The aforesaid acts of the legislature of the Territory and State of Wisconsin are received in evidence, and may be referred to and read on the hearing, and are to control in preference to any thing herein stated not strictly in conformity to said acts.

Twelfth. That at the annual spring election, held in the month of April, 1859, in the town of Orwell, or Racine, as said town then existed, three supervisors for said town were elected; that they qualified and entered upon the discharge of their duties, and that no supervisors for said town have since been elected or qualified. That George Wustum, one of the supervisors so elected in April, 1859, and chairman thereof, is living, and resides within the territory then comprised in the town of Racine or Orwell.

Thirteenth. That the town of Racine did subscribe for and receive fifty thousand dollars of the capital stock of the Racine, Janesville and Mississippi Railroad Company, as in the complainants' bills of complaint alleged, under and by virtue of the act authorizing such subscription and the issue of said bonds, and said act may be referred to and read in full at the hearing.

(Admission made in court.)

71 It is admitted that the towns of Mt. Pleasant and Caledonia, as corporations, never by any corporate act, moved the legislature for the passage of any of the laws changing any of the territorial boundaries above specified or referred to.

(CHARLES H. LEE, *Master in Chy., &c.*)

Plat 4.—Schedule "B," assessment of 1853. Value of real and personal estate, stated separately, in town of Racine, Dec. 5–6, 1853, (as such town was then constituted,) and in the several portions thereof required to be found, as follows:

Total value of real estate	$143,078
" " personal estate	4,900

Of that portion of said town as it existed at the above date, now being within and part of town of Caledonia:

Value of real estate	$52,686
" personal estate	550

Of that portion thereof now within and part of town of Mt. Pleasant:

Value of real estate	$78,420
" personal estate	4,350

72 Of that portion thereof now within and part of the city of Racine:

Value of real estate	$11,972
" personal estate	none.

Plat 3.
Plat 4.—Schedule "C," assessment of 1874.

Value of real and personal property, stated separately, at the present time, in the territory which comprised the town of Racine, as it existed Dec. 5–6, 1853:

Total value of real estate	$832,591 50
" " personal estate	123,691

Plat 8.—Of that part now included in and forming part of town of Caledonia:

Value of real estate at this time	$217,263 50
" personal estate at this time	24,811

Of that part now included in and forming part of town of Mt. Pleasant:

Value of real estate at this time	$439,530
" personal estate at this time	58,820

Of that part, now being part of the city of Racine, having been annexed by act of 1871 (ch. 348 Local L. Wis. 1871):

Value of real estate at this time	$175,798
" personal estate at this time	40,060

73 *Plat* 6.—Schedule "D," assessment of 1859. Value, March 30th, 1860, (at time legislature of Wisconsin extinguished town of Orwell,) of the parts of the town of Orwell, as theretofore constituted, taken by Caledonia and Mount Pleasant respectively.

Of the whole of said town of Orwell:

Value of real estate Mar. 30, 1860	$696,024 05
" personal estate Mar. 30, 1860	37,925

Plat 7.—Of the above amounts there is taken by Caledonia (by virtue of act of Mar. 30th, 1860):

Real estate	$298,112
Personal property	15,168

And by Mount Pleasant:

Real estate	$397,912 05
Personal property	22,757

The foregoing schedule disregards the act of 1856 (chapter 83, Local), referred to in the seventh proposition of schedule "A," and treats all the territory attempted to be annexed by that act to the city of Racine, as being part of the adjacent towns.

74 *Plat* 3.—Schedule "E," assessment of 1859. Value, Mar. 30th, 1860, of such parts of the town of Racine, as constituted Dec. 6th, 1853, which, after the passage of the act of March 30th, 1860, (ch. 242, Local,) and by virtue thereof, formed parts of Mt. Pleasant and Caledonia respectively.

Of the whole territory of Racine town, as it existed Dec. 6, '53:

Value of real estate Mar. 30th, 1860	$591,874
" personal " " "	75,170

Of these amounts Caledonia received—

Real estate from territory above described	$237,782
Personal " " " " "	3,419

Mount Pleasant received—

Real estate from terr'y above described	$354,092
Personal " " " " "	71,751

The above schedule also disregards said act of 1856 and treats the territory sought to be annexed by said act as part of Mt. Pleasant.

75 *Pl.* 7 and 8.—Schedule "F," assessment of 1870. Value, March 17th, 1871, (at time of passage of chapter 348, Local,) of Mount Pleasant, and the several portions thereof, directed to be found, as follows:

Total value of real estate in said town	$1,271,586
" " personal prop'y "	180,300

Of these amounts there was in territory annexed to city of Racine, by said act:

Real estate, value Mar. 17, 1871	$183,540
Personal property " "	45,360

Plat 6 and 8.—Of these last amounts there was in that part of the territory so annexed, which on and prior to March 30th, 1860, was part of Orwell—

Real estate, value Mar. 17, 1871	$111,580
Personal " " " " "	5,450

Leaving a balance, which was not part of Orwell and not taken therefrom by Mt. Pleasant, of—

Real estate, value March 17th, 1871	$71,960
Personal " " " "	39,910

Value, same time, of so much of Mt. Pleasant as was acquired from Orwell, exclusive of part added to city:

Real estate	$387,250
Personal property	31,710

76 *Pl.* 6, 7, and 8.—Schedule "G," assessment of 1874. Value, at this time, of property which was within the town of Orwell, March 30th, 1860, prior to the act of that date vacating said town:

Total value of real estate	$829,671 41
" " " personal property	79,748

Of these values, there is now within the limits of Caledonia—

Real estate	$326,533 41
Personal "	34,893

And within the limits of Mt. Pleasant—

Real estate	$377,610
Personal "	35,470

And within limits of city of Racine—

Real estate	$125,528
Personal "	9,385

77 SCHEDULE "H." COMPLAINANT'S TESTIMONY.

Samuel Steele, being duly sworn as a witness for complainant, testifies as follows:

I live in the town of Mt. Pleasant, Racine county; I am 52 years of age; have resided within the limits of the present town twenty-eight years, and have been assessor of said town eleven years; I am acquainted with the residence and location of the property of the residents of said town of Mt. Pleasant, and of the residents of that part of such town which, in 1860, was part of Orwell or Racine; I have examined the assessment-rolls of Mt. Pleasant for the years 1859, 1870, and 1874, and of Racine or Orwell for 1859, and have selected the necessary items of personal property valuations therefrom, which enable me to state the following results, which I make part of my testimony, and which results are correct, to the best of my belief: I find from said rolls that the value of the personal property liable to assessment and taxation in Mt. Pleasant, and within that territory, which, on the 6th day of December, 1853, was part of the town of Racine, is the sum of fifty-eight thousand eight hundred twenty dollars, according to valuations made in the year 1874; that the value of the
78 personal property in the territory taken from Orwell by Mount Pleasant, by the act of 1860, including so much thereof as was attempted by the legislature, in 1856, to be annexed to the city of Racine, is the sum of twenty-two thousand seven hundred fifty-seven dollars, according to valuations contained in the assessment and tax rolls of the year 1859. I find from examination of assessment and tax rolls for 1870, of the town of Mt. Pleasant, and from my knowledge of the territory comprised by said town, as then and now constituted respectively, and of the location of the inhabitants thereof, and the personal property therein, that the value of all personal property in said town, immediately prior to the addition to the city of Racine, made in 1871, basing the same upon said rolls of 1870, was the sum of one hundred eighty thousand three hundred dollars; that of that amount the sum of forty-five thousand three hundred and sixty dollars was carried to the city by annexation made in 1871; that of this last amount the sum of five thousand four hundred and fifty dollars was the valuation of the personal property liable to assessment in that part of the territory so added to the city, which was part of the town of Orwell in 1860, until extinguishment of that town, and the balance of the amount contained in the addition to the
79 city, namely, thirty-nine thousand nine hundred and ten dollars, was not part of Orwell, and not acquired therefrom by the town of Mt. Pleasant.

From the rolls of 1874 I find that the valuation of personal property now in Mt. Pleasant, which, in 1860, and while Orwell was in existence, belonged to that town, is the sum of thirty-five thousand four hundred and seventy dollars.

From said rolls for the year 1859, and from examination of the city rolls for that year, so far as necessary to determine, I ascertain and state that the valuation of property (personal) which was included in that part of Mount Pleasant as now constituted, which, in December, 1853, was part of then town of Racine, is the sum of seventy-one thousand seven hundred fifty-one dollars.

In these figures I have disregarded the act of 1856, making additions to city, and whenever necessary have consulted city tax-rolls for statistics as to personal property assessable within the territory which was attempted to be added by that act, and have added the items thereof, as selected, to the assessments of the town and the several parts thereof, making my figures and results the same as if that act were never passed. I have given these results to
80 the best of my ability correct, and I verily believe them to be substantially right.

SAMUEL STEELE.

E. C. Peck, being duly sworn as a witness for complainants, testifies as follows:

I am thirty-seven years of age, and reside in the city of Racine. I am at present engaged in the business of making and furnishing abstracts of title to lands in Racine county. I have been county clerk of said county for two years last past, and resided in Caledonia for about thirty years before coming to Racine. I am acquainted, and have been since 1858, with the location and property of the citizens and residents and property-holders of Caledonia; have been chairman of its board of supervisors, and have assisted in making the town records from time to time. I have examined the assessment and tax rolls of that town and of the town of Orwell (so far as it relates to what is now part of Caledonia) for the years 1859, 1870, and 1874, and have made computations and calculations therefrom, at the instance of complainants, and state the following results as part of my testimony:

I find from tax-rolls of 1874 that the value of personal property in that part of Caledonia which was part of town of Racine
81 Dec. 6th, 1853, is the sum of twenty-four thousand eight hundred eleven dollars.

I find from rolls of 1859 of town of Racine or Orwell and of Caledonia, that the value of personal property which was assessable at that time, within that part of Caledonia as now constituted and which, in Dec., 1853, was part of town of Racine, as then constituted, to be three thousand four hundred nineteen dollars; and that the value of personal property in that part of Racine or Orwell taken therefrom by Caledonia in March, 1860, to be fifteen thousand one hundred sixty-eight dollars; and from the rolls of town of Caledonia for 1874, I find that the value of personal property in so much of said town as, in March, 1860, was part of Orwell, is the sum of thirty-four thousand eight hundred ninety-three dollars.

I have given these results from the best of my ability, and believe them to be substantially correct.

ERASTUS C. PECK.

Alanson Filer, sworn as a witness for complainant, testifies:

I am 63 years of age, and reside in Racine. I have been assessor of the city of Racine three years, and a resident of Racine city
82 and immediate vicinity for nearly forty years. I have examined the tax-rolls of said city for 1874, and have selected to the best of my ability the values of personal property therein which, in March, 1860, was part of Orwell, and find the amount thereof to be the sum of $9,385. Also the amount of the personal property assessable in that part of said city which, in 1853, was part of the then town of Racine, and such amount is $40,060. These amounts are correct, to the best of my belief, and as nearly as I have been able to state them.

ALANSON FILER.

SCHEDULE "1." BONDS.

LATHAM CORNELL
vs.
TOWN OF MT. PLEASANT ET AL.

Complainant offers in evidence certain bonds described in the bill of complaint herein, of which a printed copy of the form of such bonds is annexed, and marked "X." Such bonds so offered are eighty in number, and are numbered from one to sixty-nine inclusive, and from ninety to one hundred inclusive, and to each of such bonds, which are for five hundred dollars each, are
83 attached coupons or interest-warrants due and payable on the tenth day of February in each year from the year 1858 to the year 1873, both inclusive; and complainant claims as now due the principal of each of said bonds and the amount of each of said interest-warrants, and interest upon the principal of each of said bonds from the tenth day of February, A. D. 1873.

CHARLES BECKWITH
vs.
SAME DEFENDANTS.

Complainant offers in evidence certain bonds mentioned in his bill of complaint, substantially and in all respects similar in form to said exhibit "X," save that the coupon or interest-warrant payable on the tenth day of February, 1858, is detached from each of the bonds now offered. Said bonds are numbered from seventy-one to eighty-nine inclusive, and are twenty in number, are for $500 each, and each of the interest-warrants which are attached,

and which are for interest due on the tenth day of February in each year from 1859 to 1873, both inclusive, are for thirty-five dollars each.

Complainant also offers twenty interest-warrants, each due on the tenth day of February, 1858, for $35 each, and which pur-
84 port to have originally accompanied said bonds, being respectively numbered so as to correspond therewith.

Upon each of these detached interest-warrants is an endorsement in the following words and figures:

"$17.50 pd. 11th August, '57." And upon the end of interest-warrant to bond No. 77 is the following:

"20 bonds, 17\frac{50}{100}$ each."

Such interest-warrants are attached together, and all the foregoing facts will more fully appear from inspection of such bonds and interest-warrants, which I herewith return with my signature thereon, and make the same part of this report and schedule.

I also make and report the following computation of amounts due upon said bonds to the date of this report:

LATHAM CORNELL, COMPLAINANT,
against
THE TOWN OF MOUNT PLEASANT & AL., DEFTS.

Bond No. 1.—Principal	$500 00
16 coupons @ $35	560 00
Int. on bond from Feb. 10th, 1873, to May 12th, 1875, 2 y., 3 m., 2 d	78 95
Total	$1,138 95

85 Eighty bonds of same tenor and amount, upon each of which there is due the above amount, $1,138.95×80 is $91,116.00, which is the amount due at the date of this report.

CHARLES BECKWITH
against
SAME DEFTS.

Twenty bonds of same tenor and amount, except that the coupon of Feby. 10th, 1858, is detached, and has endorsed a payment of 17\frac{50}{100}$.

Amt. due on each bond and 15 coupons	$1,103 95
Add amt. due on detached coupon	17 50
	$1,121 45

$1,121.45×20 is $22,429.00, which is the amount due at the date of this report.

86 By special authority of the State Legislature.

United States of America,

Town of Racine.—State of Wisconsin.

"X." No. —— $500.

The town of Racine acknowledge themselves to owe the Racine, Janesville & Mississippi Railroad Company the sum of five hundred dollars for five shares of one hundred dollars each in the capital stock of said company, subscribed for and purchased of said company by said town, which sum said town promise to pay to said company, or to the holder hereof, at their office in the city of New York, on the tenth day of February, 1873, and also interest thereon at the rate of seven per centum per annum, payable annually on the tenth day of each February ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants at said office.

And it is further agreed that this obligation and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery, as if the same were a note of hand payable to bearer.

[SEAL.] In testimony whereof, the board of supervisors of said town have caused to be affixed its corporate seal and these presents to be subscribed by their chairman and attested by the clerk thereof, this 6th day of December, 1853.

Attest, JAS. MOTT TITUS. STEPHEN N. IVES, *Chairman*.

JAS. MOTT TITUS, *Clerk*.

I, J. Mott Titus, clerk of the town of Racine, do hereby certify that the foregoing obligation is issued in pursuance of a special act of the legislature of the State of Wisconsin, entitled "An act to authorize certain towns to aid in the construction of the Racine, Janesville & Mississippi railroad, approved April 2, 1853," and sanctioned by a majority of the legal voters of said town at an election duly held for such purpose December 5, 1853.

JAS. MOTT TITUS, *Clerk*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1873, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1872, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1871, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1870, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1869, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1868, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1867, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1866, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the *Bond* of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1865, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on pre-

sentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1864, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1863, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1862, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1861, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1860, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1859, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1858, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

[Across the face of Feb., 1858, coupon.] This coupon detached from each of Beckwith bonds. C. H. Lee. (over.)

[On back of Feb., 1858, coupon.] $17.50 is endorsed on each of coupons like this, detached from Beckwith's bonds. C. H. Lee.

Deposition of William C. Allen.

William C. Allen, being duly sworn as a witness for defendants, Mt. Pleasant and Caledonia and city of Racine, testifies as follows:

Q. State your name, age, occupation, and residence.

A. My name is William C. Allen. I am sixty-one years of age, reside at Racine, Wisconsin, and my occupation, when engaged in business, is lawyer.

Q. Were you acquainted with the corporation known as the Racine, Janesville & Mississippi Railroad Company?

A. I was.

Q. Were your a director? If yea, how long?

A. I was a director, elected upon the first organization of the Co.; was a commissioner or corporator in the act of incorporation, and continued a director until the deed of surrender to the trustees of the bondholders, in 1859. I don't know but I am a director yet.

Q. Had you knowledge of the value or estimation in which the stock of that Co. was held from 1853 to 1856?

A. I had.

Q. What was its value during that period?

(Complainants' counsel objects, as immaterial.)

A. I can state how it was held. It was held by the Co. at par or nearly so. I can't state what the value of the stock was then, but can state how it was held by the Co. It was held by the Co.
88 in 1855 or 1856 at par or nearly so. I don't know of any sales as late as 1856 for less than 75 per cent. of par value, as it occurs to me now.

Q. Did you know or hear of any sales of that stock, at or about the year 1856, for that price, or near that price?

(Same objection by complts.' counsel.)

A. I never heard of the stock being put upon the market. There were trades and sales made of the stock about that time, between individuals, of which I heard or had knowledge; knew of a transaction in lands, where the lands were put in at cash value, and the

stock traded for the lands at par. Think this was about January, 1855. This exchange was made by the Co. issuing stock for lands. Mr. Marshall M. Strong sold some stock of his own to William Grovenor, of New York, as I learned from both the parties, for 75 per cent. of par value. I am inclined to think that sale took place in 1855, in or about August. Think the Co. exchanged stock for a farm in Carroll county, in spring of 1856. In all cases where the stock was traded for lands, stock was issued by the Co. in payment for lands. Think stock was exchanged for some depot grounds.

89 My knowledge of the foregoing transactions was derived from being a director. Was not personally knowing to but one of the transfers above mentioned, namely, the lands in Carroll county.

(Complainants' counsel objected in due time to the above questions and testimony as incompetent.)

WM. C. ALLEN.

Orlando C. Munroe, being duly sworn as a witness for defendants, testified as follows:

My name is Orlando C. Munroe. I am fifty-six years old, farmer by occupation, and reside in the town of Mount Pleasant. I have resided in that town since the spring of 1846.

Q. What knowledge of the business of said town, transacted at its town meetings from 1853 to this time, have you had?

(Complainants' counsel objects, as immaterial and incompetent.)

A. I have either been town clerk or supervisor every year but one, till last April, and have had a general knowledge of the business and transactions of the town.

Q. State whether or not any railroad stock or property of any kind, belonging to the town of Racine in its corporate capacity, ever came to the custody of the officers of the town of Mount Pleasant?

90 (Objected to by complainant's counsel as immaterial, irrelevant, and incompetent, and as involving a conclusion of law.)

A. No, sir; nothing. Not even the records of the old town.

ORLANDO C. MUNROE.

Whereupon it is admitted (counsel for the respective parties being present) that the railway line of the Racine, Janesville & Mississippi R. R. Company, or its successors, or any line of railway connecting therewith, did not run through any part of the territory of the defendant, the town of Caledonia, as now constituted, at any time, or through or upon any territory now or at any time heretofore comprised within the limits of such town. (But the admission is made subject to objection on the ground of materiality.)

Erastus C. Peck, being duly sworn as a witness for defts., towns of Mt. Pleasant and Caledonia and city of Racine, testifies as follows:

My name is Erastus C. Peck; I am thirty-seven years of age; I reside in Racine, and my occupation is furnishing abstracts of title to lands in Racine co. I resided in Caledonia from 1841 to 1872, except about a year. Was chairman of the board of super-
91 visors of the town of Caledonia for years 1871 and part of 1872.

Q. Did you have knowledge of the business of the town from 1859 to the present time?

(Complts.' counsel objects, as immaterial and incompetent.)

A. I had a general knowledge—the same as any other resident, perhaps more than people generally.

Q. Are you familiar with the books and records of the town?

(Same objection by complainants' counsel.)

A. I have had access to them. I have examined them at different times as a citizen, and also when I was supervisor.

Q. State whether or not any railroad stock of the town of Racine, or property of any kind belonging to that town in its corporate capacity, ever came to the possession of the officers of the town of Caledonia.

(Objected to same as before.)

A. Not to my knowledge. During the summer of 1871 I made an examination of the records of that town for the purpose of ascertaining the facts whether or not they had ever received any property or stock from the town of Racine. I found nothing upon the records relating to it.

(Complts.' counsel objects to all the foregoing answer ex-
92 cept the first clause as not responsive to the question propounded.)

Q. Have you made examination of the records for the purpose of finding whether the town of Caledonia ever received any property or stock from the town of Racine?

(Objected to as immaterial and incompetent.)

A. I made examination as above stated for the purpose of ascertaining whether property of any nature had come from the corporation town of Racine to the town of Caledonia, and for the purpose of ascertaining all the facts in reference to the abolishing of the town of Racine and the cession of a portion thereof to Caledonia. I found nothing with reference thereto.

ERASTUS C. PECK.

Thomas Dickinson, being duly sworn as a witness for defendants, testifies as follows:

My name is Thomas Dickinson; I am 59 years of age; reside at Racine, Wisconsin, and am Prest. of the Racine Gas-Light Co.

Q. Were you acquainted with the price of the stock of the Racine, Janesville & Mississippi Railroad Company between 1853 and 1860?

(Complts.' counsel objects, as immaterial and incompetent.)

A. I bought some in 1854 or 1855—probably in 1855.

93 Q. Did you know of other transactions?

(Same objection.)

A. Not of actual buying, but I knew of exchanges.

Q. At what price did you buy?

(Same objection.)

A. I bought at $65 per share.

Q. Did you buy any at any other price?

A. I think not, for money.

Q. Did you pay cash for what you bought for $65?

(Objected to same as before.)

A. Yes, sir. THOMAS DICKINSON.

Charles Herrick, duly sworn as a witness for defendants, testified as follows:

My name is Charles Herrick; I am sixty years of age, and reside in Mt. Pleasant, near the limits of the city of Racine.

Q. Were you acquainted with the value of the stock of the Racine, Janesville and Miss. R. R. Company between 1853 and 1860? If so, state.

(Objected to by complts.' counsel, as immaterial and incompetent.)

A. I knew its exchangeable value. I exchanged some for other property at 50 per cent. of par value.

Q. Did you know of other transactions in this stock?

(Same objection.)

94 A. Yes; I sold some, but can't say for what or at what price. It was in exchange for lands.

Q. Did you hear of other transactions in this stock?

(Same objection.)

A. Yes; there were a good many transactions in this stock, of sale and exchange.

CHARLES HERRICK.

The counsel for the several defendants objected in due season to all testimony and evidence offered in behalf of the complainants, and to every question eliciting the same, on the ground that the facts and allegations thereby sought to be proven are irrelevant and incompetent and not material, and if true create no liability on the part of these defendants. But it is conceded by said de-

fendants, and by the complainant, that the several assessment-rolls produced before the master herein may be taken to be evidence of value, without objection as to the sufficiency of the proof of values, if such evidence be held material or competent; and such objection is expressly made to apply to the schedule "A" of agreed facts, in all respects the same as if such agreed facts had been proven by testimony.

End of the foregoing schedules.

C. H. LEE, *Master & Exr., &c.*

95 *Hearing.*

May 12, 1875.—This day came the parties, by their counsel, and this cause came on to be heard upon the pleadings and proofs and the report of Charles H. Lee, master, to whom reference was made, and was argued by the said counsel, and being submitted, the court held the same under advisement.

Order of Reference to Master.

April 17, 1876.—This day came the complainant, by his counsel, and on his motion it is ordered by the court that reference be and hereby is made to Charles H. Lee, esq., one of the masters of this court, to compute, ascertain, and report the amount due upon the bonds and interest-warrants mentioned in the bill, with interest to date of report, and also to ascertain and report the amount for which each of the defendants is justly liable.

April 18, 1876.—This day came Charles H. Lee, esq., master in chancery, and filed his supplementary report, as follows:

Supplementary Report.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

LATHAM CORNELL, COMPLAINANT,
vs.
THE TOWN OF MOUNT PLEASANT, THE Town of Caledonia, and the City of Racine, Defendants.

96 CHARLES BECKWITH, COMPLAIN'T,
vs.
SAME DEFEND'TS.

To the judges of the Circuit Court of the United States for the Eastern District of Wisconsin.

In pursuance of an order of this court referring the above-mentioned suits to the undersigned, to compute, ascertain, and report the amounts due respectively upon the bonds and interest-warrants mentioned in the bill, in each of said suits, with interest to day of

report, and also to ascertain and report the amount for which each of said defendants is justly liable (having been also thereunto requested by the solicitors of the respective complainants), I do certify and report, that at the day of the date hereof there is due upon the bonds and interest-warrants held by said Latham Cornell, including interest, the sum of ninety-three thousand seven hundred and twenty dollars and eighty cents; and upon the bonds and interest-warrants held by said Charles Beckwith there is due, at the day of the date hereof, the sum of twenty-three thousand and eighty dollars and twenty cents, including interest.

97 And I further certify that I have found and ascertained the amount which each of the defendants is justly liable to pay, in proportion to the amount of territory taken by each from the town of Orwell, or Racine, as the same existed just prior to its being extinguished in 1860; and I do find and report that in the suit of Latham Cornell the several defendants are liable to pay as follows:

The town of Caledonia, the sum of forty-nine thousand three hundred twenty-two $\frac{17}{100}$ dollars, $49,322.17.

The town of Mt. Pleasant, the sum of forty-two thousand four hundred sixty-seven $\frac{13}{100}$ dollars, $42,467.13.

And the city of Racine, the sum of one thousand nine hundred thirty-one $\frac{50}{100}$ dollars, $1,931.50.

And in the suit of Charles Beckwith the several defendants are liable to pay as follows:

The town of Caledonia, the sum of twelve thousand one hundred forty-six $\frac{70}{100}$ dollars, $12,146.70.

The town of Mt. Pleasant, the sum of ten thousand four hundred fifty-seven $\frac{72}{100}$ dollars, $10,457.72.

And the city of Racine, the sum of four hundred seventy-five $\frac{78}{100}$ dollars, $475.78.

And I further certify that the geographical distribution of territory held to be liable is shown by the annexed plat, exhibited to this report, and that my computations appear in certain schedules which are hereto affixed.

CHARLES H. LEE,
Master & Ex. in Chy.

APRIL 18*th*, 1876.

Master's fees, $20, pd. by complts.' solicitors.

98 SCHEDULE "A." BONDS.

Cornell's Suit.

Principal, ea. bond	$500 00	
16 coupons, $35	560 00	
Int. on ea. bond, Feb. 10, '73, to Apr. 18, 1876, 7 per cent	111 51	
Due on each bond	$1,171 51	
Eighty bonds		$93,720 80

Beckwith's Suit.

Principal, ea. bond	$500 00	
15 coupons, $35	525 00	
Interest as above	111 51	
½ detached coupon due, ½ paid	17 50	
Due on each bond	$1,154 01	
Twenty bonds		$23,080 20
		$116,801 00

Cornell's Suit.

Caledonia pays $\frac{1195}{2270}$+		$49,322 17
Mt. Pleasant " $\frac{1029}{2270}$+		42,467 13
City Racine " $\frac{468}{2270}$+		1,931 50
	$93,720.80	

Beckwith's Suit.

Caledonia pays $\frac{1195}{2270}$		12,146 70
Mt. Pleasant " $\frac{1029}{2270}$		10,457 72
City Racine " $\frac{468}{2270}$		475 78
	$23,080.20	
		$116,801 00

'99 SCH. "B." TERRITORY.

Caledonia takes fr. Racine or Orwell, as follows:

Town. 4, range 22, sections 25 to 36*	acres, 7,680
" 4, " 23, " 28 " 33*	3,840
" " " " fr. section 27	408
" " " " " " " 34	23

Total acres, 11,951.

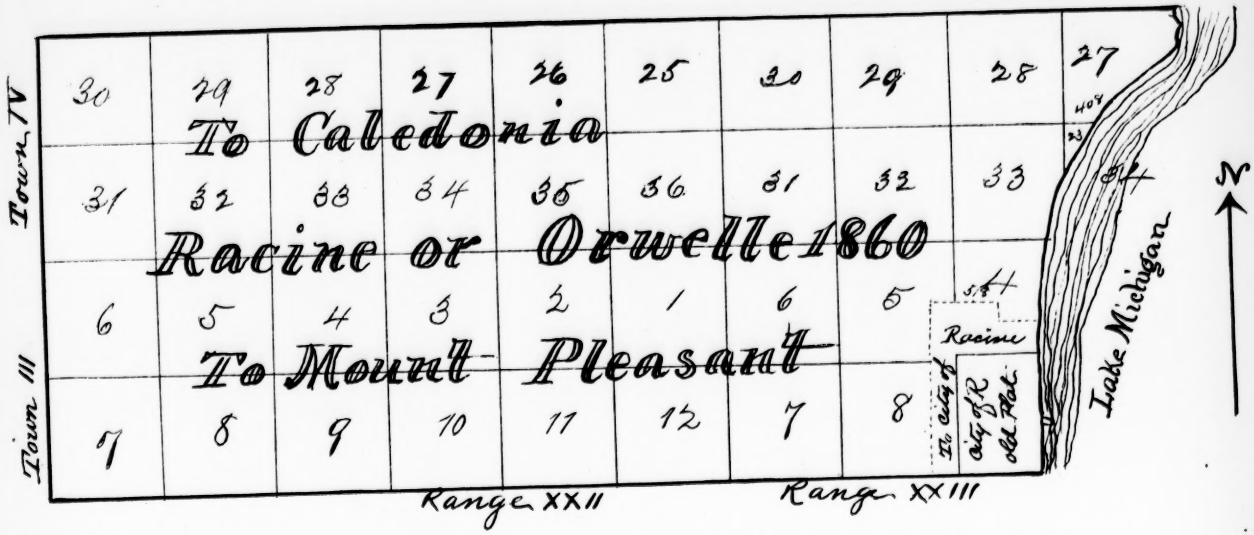
* (Both inclusive.)

Mt. Pleasant takes fr. Racine or Orwell, as follows:

Town. 3, range 22, sections 1 to 12*	7,680
" " " 23, " 6 and 7	1,280
" " " " N. ½ section 5	320
" " " " S.W. ¼ " 5	160
" " " " W. ½ S.E. ¼ section 5	80
" " " " N. ½ N. ½ S.E. ¼ and N. ½ 4 } †	290
" " " " W. ½ section 8	320
" " " " W. ½ E. ½ section 8	160

Total acres, 10,290.

* (Both inclusive.) † (Section 4 is fractional, containing 518 acres. The shortage is proportioned between town and city.)


Town IV
Town III
30
29
28
27
26
25
30
29
28
27
To Caledonia
31
32
33
34
35
36
31
32
33
Racine or Orwell 1860
6
5
4
3
2
1
6
5
4
Racine
To Mount Pleasant
7
8
9
10
11
12
7
8
To city of Racine
City of R old Plat
Lake Michigan
N
Range XXII
Range XXIII

City of Racine takes fr. said town:	
E. ½ E. ½ of sec. 8, T. 3, R. 23	160
E. ½ S.E. ¼ " 5, " " " "	80
S.E. ¼ (except 40 *a*) of sec. 4, T. 3, R. 23 } † supra	228
N.W. ¼ (fractional) " " 4, " " " " }	
Total acres, 468.	22,709

100 NOTE.—In making the foregoing computation each and every section of territory has been assumed to contain six hundred and forty acres, save only where the section was known to be substantially encroached upon by Lake Michigan. In such instances the approximate area of fractional sections has been ascertained by reference had to the recorded maps of the office of register of deeds of Racine county, and, in case of fractional section 4, the shortage has been equated, as near as may be, between the city and Mt. Pleasant.

Existing municipal boundaries are taken from the admitted facts contained in the former master's report in these suits.

CHARLES H. LEE.

101 [Here follows diagram, marked page 101.]

102 In the Circuit Court of the U. S., Eastern District Wisconsin.

LATHAM CORNELL
vs.
TOWN MT. PLEASANT ET AL.

CHARLES BECKWITH
vs.
SAME.

It is hereby stipulated and agreed that the master's report of amount due, and of the sums chargeable to and to be paid by each of the defendants, in the respective suits above entitled, is made upon the motion and at the instance of complainants' solicitors, and that nothing either in said report or in the decree founded thereon shall be taken to be admitted, stipulated, or agreed to by the defendants, or either of them, and the fact that the master was also one of defendants' solicitors shall not be construed as in any way affecting the rights of defendants, or as any admission upon their part of the correctness of the same, or the decrees thereon founded, in point of law or mode of distributing liability.

FULLER & HARKNESS,
Sol'rs for Compl'ts.

103 And now, at this same term, to wit, January term, 1876, and on the eighty-second day thereof, to wit, on the eighteenth day of April, A. D. 1876, present the Hon. Thomas Drummond, Circuit Judge, presiding, the following proceedings were had, to wit:

Decree.

CHARLES BECKWITH, COMPLAINANT,
against
THE TOWN OF MOUNT PLEASANT, THE TOWN OF Caledonia, and the City of Racine. } In Equity.

This cause came on to be heard at the April term of this court, to wit, on the 12th day of May, A. D. 1875, upon the pleadings and proofs reported by the master, and having been argued by counsel, the court took the same under advisement; and a further computation of the amount due to this date upon the bonds described in the complainant's bill and exhibited in the proofs having been directed and made and filed by the master, bearing date the 18th day of April, 1876; and it satisfactorily appearing to the court that the town of Racine, a municipal corporation in the county of Racine, in said Eastern District of Wisconsin, and then having
104 within its boundaries and municipal jurisdiction the territorial area described in the complainant's bill, on or about the 6th day of December, 1853, made, executed, and delivered the bonds described in the complainant's bill of complaint, upon the consideration, under the authority, and in the manner in said bill of set forth; that the said town of Racine continued in existence as such municipal corporation, and by the same name and with the changes in its territorial boundaries set forth in the complainant's bill, until on or about the second day of November, 1859, when the county board of supervisors of Racine county, within which county said town of Racine was located, by a resolution of said board changed the name of said town from "The Town of Racine" to "The Town of Orwell," and that the township and municipal corporation theretofore known as the town of Racine remained in existence in and by the name of the town of Orwell, and with the same territorial limits which the town of Racine had prior to such change of name, until on or about the 30th day of March, 1860, when the legislature of the State of Wisconsin, by an act published as chapter two hundred and forty-two of the general laws of said state for the year 1860, and published and approved Mch. 30th, 1860, vacated and
105 extinguished the corporation and body politic known as the town of Orwell, in the county of Racine, and declared that said corporation should thereafter have no existence as a body politic and corporate. That in and by the same act of the legislature of said state, the whole territory of said town of Orwell, formerly known as the town of Racine, was attached to the defendants, the town of Mount Pleasant and the town of Caledonia, in the proportions and by the boundary lines in said act named, and that no provision was made in or by said act for the payment of the corporate debts of said township and body politic theretofore known by the names of the town of Racine and the town of Orwell. And

it further appearing to the court that, on or about the 17th day of March, 1871, by an act of the legislature of said State of Wisconsin, published as chapter three hundred and forty-eight of the local laws of said state for the year 1871, approved March 17th, and published March 18th, 1871, a portion of the lands and territory which had been within the town of Orwell at the time it was vacated, and which, by the act vacating Orwell, was attached to Mount Pleasant, was detached from the town of Mount Pleasant and attached to the defendant, the city of Racine, and in and by said act it was provided that the defendant, the city of Ra-
106 cine, should assume and pay so much of the municipal indebtedness of the former town of Racine, if any, as the lands described in the addition to said city might be or become legally chargeable with and liable to pay.

And it further appearing that the complainant, at the time of filing his said bill, was and now is the owner in good faith and for value, of the bonds in the bill mentioned, and upon which there is due at this date the sum of twenty-three thousand and eighty and $\frac{20}{100}$ ($23,080$\frac{20}{100}$) dollars.

Now, at the January term of this court, to wit, on the 18th day of April, 1876, the court being sufficiently advised, and being of the opinion that the municipal indebtedness of said town of Racine, otherwise known as the town of Orwell, was not extinguished by said act of the legislature, vacating and disorganizing said township, and distributing its territory to other townships and municipal corporations, and that an equitable liability for such indebtedness accrued against the defendants, to which such territory was distributed, in the proportion which the taxable property received by each and the valuation thereof bore to the whole taxable property and the whole debt of such vacated town.

107 Now, therefore, it is considered, adjudged, and decreed that the master's report of the amount due on the bonds set forth in complainant's bill, and of the respective proportions and valuations of the taxable property received by each of the defendants from said town of Orwell, or which belonged to said town immediately prior to the vacation thereof, be and the same is adopted, ratified, and confirmed.

And it is further adjudged and decreed that the complainant, Charles Beckwith, do have and recover of and from the defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, the sum of twenty-three thousand and eighty and $\frac{20}{100}$ ($23,080$\frac{20}{100}$) dollars, hereby adjudged due to the complainant from the defendants, for principal and interest upon the bonds described in the complainant's bill, and which sum it is adjudged the complainant have and recover from the defendants severally, and that the defendants severally pay the same in the proportions and respective amounts following, to wit:

That the complainant, Charles Beckwith, have and recover of and

from the defendant, the town of Caledonia, the sum of nine thousand two hundred and eighty-one and $\frac{50}{100}$ ($9,281$\frac{50}{100}$) dollars, and interest thereon from this date; and also the further sum of fifty-eight $\frac{37}{100}$ dollars, being one-third of complainant's costs
108 and disbursements of the action, as taxed, and hereby adjudged to the complainant.

That the complainant, Charles Beckwith, have and recover of and from the defendant, the town of Mount Pleasant, the sum of ten thousand seven hundred and forty-two and $\frac{70}{100}$ ($10,742$\frac{70}{100}$) dollars, and interest from this date; and also the further sum of fifty-eight $\frac{37}{100}$ dollars, being one-third of complainant's costs, as taxed

And that the complainant, Charles Beckwith, have and recover of and from the defendant, the city of Racine, the sum of three thousand and fifty-six (3,056) dollars, and interest thereon from this date; and also the further sum of fifty-eight $\frac{36}{100}$ dollars, being one-third of complainant's costs, taxed and adjudged to him as aforesaid.

And it is further adjudged that the complainant have execution against said defendants severally, to collect said several sums decreed to be paid by each, in the manner provided by law.

Appeal.

August 3, 1876.—This day came the defendants, the town of Mount Pleasant and the town of Caledonia, by their solicitors, and prayed an appeal to the Supreme Court of the United States, and filed the bond of Orlando C. Munroe and Henry A. Warner, in
109 the sum of five hundred dollars, conditioned that said defendants shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, which bond is approved by the circuit judge, and is as follows:

Appeal Bond.

Know all men by these presents, that we, Orlando C. Munroe, of Mount Pleasant, and Henry A. Warner, of Caledonia, Racine county, Wisconsin, are held and firmly bound unto Charles Beckwith, of Hartford, Ct., in the full and just sum of five hundred dollars, to be paid to the said Charles Beckwith, his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 25th day of May, 1876, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas, lately, at a term of the Circuit Court of the United States for the Eastern District of Wisconsin, in a suit depending in said court between Charles Beckwith, complainant, and the town of Mount Pleasant, the town of Caledonia, and the city of Racine, defendants, decree was rendered against the said defend-

ants, and the said defendants, the town of Mt. Pleasant and
110 the town of Caledonia, having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said complainant citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next.

Now the condition of the above obligation is such that if the said the town of Mount Pleasant and the town of Caledonia shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

O. C. MUNROE. [L. S.]
HENRY A. WARNER. [L. S.]

Sealed and delivered in presence of—
C. H. LEE.

EASTERN DISTRICT OF WISCONSIN, *ss.*

On this 26th day of May, 1876, came personally before me, Orlando C. Munroe and Henry A. Warner, the sureties within named, and each for himself made oath that he is worth the sum of one thousand dollars, exclusive of property exempt and his debts.

CHARLES H. LEE,
Commissioner Cir. Ct. U. S.

(Endorsed:) Approved.
THOMAS DRUMMOND, *Circuit Judge.*

Whereupon it is ordered that said appeal be and hereby is allowed, and a citation issued.

111 UNITED STATES OF AMERICA, } *ss.*
EASTERN DISTRICT OF WISCONSIN. }

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the Eastern District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the case of Charles Beckwith vs. The Town of Mt. Pleasant, The Town of Caledonia, and The City of Racine, Defendants.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States the 101st.

[SEAL.] EDWARD KURTZ, *Clerk.*

112 THE UNITED STATES OF AMERICA, *ss.*

[SEAL.] To Charles Beckwith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal in the Circuit Court of the United States for the Eastern District of Wisconsin, wherein the town of Mt. Pleasant and the town of Caledonia are appellants, and you are appellee, to show cause, if any there be, why the decree passed against the said the town of Mount Pleasant and the town of Caledonia should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, circuit judge of the United States for said circuit, at the city of Milwaukee, this third day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of our independence the 101st.

THOMAS DRUMMOND,
Circuit Judge.

We accept service of above citation, this 2d day of October, A. D. 1876.

FULLER & HARKNESS,
Complainant's Solicitors, Racine, Wisconsin.

(Endorsed on cover:) E. Wisconsin, C. C. U. S. No. 252. The Town of Mount Pleasant and the Town of Caledonia, Appellants, vs. Charles Beckwith. Filed 14th October, 1876.